

**61-1-1. Fraud unlawful.**

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly to:

- (1) employ any device, scheme, or artifice to defraud;
- (2) make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

Amended by Chapter 284, 1983 General Session

**61-1-2. Investment adviser -- Unlawful acts.**

(1) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise to:

- (a) employ any device, scheme, or artifice to defraud the other person;
- (b) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person; or
- (c) divide or otherwise split any consideration with any person not licensed under this chapter as an investment adviser or investment adviser representative.

(2) (a) Except as may be permitted by rule of the division, it is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing that:

(i) the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(ii) no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(iii) the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(b) Subsection 61-1-2(2)(a)(i) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date.

(c) "Assignment," as used in Subsection 61-1-2(2)(a)(ii), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

(d) If the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(3) It is unlawful for any investment adviser to take or have custody of any

securities or funds of any client if:

- (a) the division by rule prohibits custody; or
- (b) in the absence of a rule, the investment adviser fails to notify the division that he has or may have custody.

(4) The division may by rule adopt exemptions from Subsections 61-1-2(2)(a)(i), (ii), and (iii) where such exemptions are consistent with the public interest and within the purposes fairly intended by the policy and provisions of this chapter.

Amended by Chapter 356, 2009 General Session

**61-1-3. Licensing of broker-dealers, agents, investment advisers, and investment adviser representatives.**

(1) It is unlawful for a person to transact business in this state as a broker-dealer or agent unless the person is licensed under this chapter.

(2) (a) It is unlawful for a broker-dealer or issuer to employ or engage an agent unless the agent is licensed. The license of an agent is not effective during any period when the agent is not associated with:

- (i) a particular broker-dealer licensed under this chapter; or
- (ii) a particular issuer.

(b) When an agent begins or terminates an association with a broker-dealer or issuer, or begins or terminates activities as an agent, the agent and the broker-dealer or issuer shall promptly notify the division.

(c) An agent who terminates an association with a broker-dealer or issuer is considered to be unlicensed until the day on which the division:

- (i) approves the agent's association with a different broker-dealer or issuer; and
- (ii) notifies the agent of the division's approval of the association.

(d) (i) It is unlawful for a broker-dealer or an issuer engaged, directly or indirectly, in offering, offering to purchase, purchasing, or selling a security in this state, to employ or associate with an individual to engage in an activity related to a securities transaction in this state if:

- (A) (I) the license of the individual is suspended or revoked; or
- (II) the individual is barred from employment or association with a broker-dealer, an issuer, or a state or federal covered investment adviser; and

(B) the suspension, revocation, or bar described in Subsection (2)(d)(i)(A) is by an order:

- (I) under this chapter;
- (II) of the Securities and Exchange Commission;
- (III) of a self-regulatory organization; or
- (IV) of a securities administrator of a state other than Utah.

(ii) A broker-dealer or issuer does not violate this Subsection (2)(d) if the broker-dealer or issuer did not know and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar.

(iii) An order under this chapter may modify or waive, in whole or in part, the application of Subsection (2)(d)(i) to a broker-dealer or issuer.

(3) It is unlawful for a person to transact business in this state as an investment adviser or as an investment adviser representative unless:

- (a) the person is licensed under this chapter;
- (b) the person's only clients in this state are:
  - (i) one or more of the following whether acting for itself or as a trustee with investment control:
    - (A) an investment company as defined in the Investment Company Act of 1940;
    - (B) another investment adviser;
    - (C) a federal covered adviser;
    - (D) a broker-dealer;
    - (E) a depository institution;
    - (F) a trust company;
    - (G) an insurance company;
    - (H) an employee benefit plan with assets of not less than \$1,000,000; or
    - (I) a governmental agency or instrumentality; or
  - (ii) other institutional investors as are designated by rule or order of the director;

or

- (c) the person:
  - (i) is licensed in another state as an investment adviser or an investment adviser representative;
  - (ii) has no place of business in this state; and
  - (iii) during the preceding 12-month period has had not more than five clients, other than those specified in Subsection (3)(b), who are residents of this state.

(4) (a) It is unlawful for:

- (i) a person required to be licensed as an investment adviser under this chapter to employ an investment adviser representative unless the investment adviser representative is licensed under this chapter, except that the license of an investment adviser representative is not effective during any period when the person is not employed by an investment adviser licensed under this chapter;

(ii) a federal covered adviser to employ, supervise, or associate with an investment adviser representative having a place of business located in this state, unless the investment adviser representative is:

- (A) licensed under this chapter; or
- (B) exempt from licensing; or
- (iii) an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to providing investment advice in this state if:
  - (A) (I) the license of the individual is suspended or revoked; or
  - (II) the individual is barred from employment or association with a state or federal covered investment adviser, broker-dealer, or issuer; and
  - (B) the suspension, revocation, or bar is by an order:
    - (I) under this chapter;
    - (II) of the Securities and Exchange Commission;
    - (III) a self-regulatory organization; or
    - (IV) a securities administrator of a state other than Utah.

(b) (i) An investment adviser does not violate Subsection (4)(a)(iii) if the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar.

(ii) An order under this chapter may waive, in whole or in part, the application of

Subsection (4)(a)(iii) to an investment adviser.

(c) When an investment adviser representative required to be licensed under this chapter begins or terminates employment with an investment adviser, the investment adviser shall promptly notify the division.

(d) An investment adviser representative who terminates association with an investment adviser is considered unlicensed until the day on which the division:

(i) approves the investment adviser representative's association with a different investment adviser; and

(ii) notifies the investment adviser representative of the division's approval of the association.

(5) Except with respect to an investment adviser whose only clients are those described under Subsections (3)(b) or (3)(c)(iii), it is unlawful for a federal covered adviser to conduct advisory business in this state unless the person complies with Section 61-1-4.

Amended by Chapter 317, 2011 General Session

**61-1-4. Licensing and notice filing procedure.**

(1) (a) A broker-dealer, agent, investment adviser, or investment adviser representative shall obtain an initial or renewal license by filing with the division or its designee an application together with a consent to service of process under Section 61-1-26.

(b) (i) The application shall contain the applicant's Social Security number and whatever information the division by rule requires concerning such matters as:

(A) the applicant's form and place of organization;

(B) the applicant's proposed method of doing business;

(C) (I) the qualifications and business history of the applicant; and

(II) in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser;

(D) whether the applicant has been subject to:

(I) an injunction, administrative order, or misdemeanor conviction involving a security or any aspect of the securities business; or

(II) a felony conviction; and

(E) the applicant's financial condition and history.

(ii) An applicant's Social Security number is a private record under Subsection 63G-2-302(1)(i).

(c) The division may, by rule or order, require an applicant for an initial license to publish an announcement of the application in one or more specified newspapers published in this state.

(d) A license or notice filing of a broker-dealer, agent, investment adviser, or investment adviser representative expires on December 31 of each year.

(e) (i) If no denial order is in effect and no proceeding is pending under Section 61-1-6, a license becomes effective at noon of the 30th day after an application is filed.

(ii) The division may by rule or order specify an earlier effective date and may by

order defer the effective date until noon of the 30th day after the filing of any amendment.

(iii) Licensing of a broker-dealer automatically constitutes licensing of only one partner, officer, director, or a person occupying a similar status or performing similar functions as a licensed agent of the broker-dealer.

(iv) Licensing of an investment adviser automatically constitutes licensing of only one partner, officer, director, or a person occupying a similar status or performing similar functions.

(v) (A) For purposes of the activities of a licensee in this state, during the time period that a broker-dealer or investment adviser is licensed in this state:

(I) the broker-dealer shall maintain a principal; and

(II) the investment adviser shall maintain a designated official.

(B) The division may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide a process for a person to identify for the division:

(I) a principal or designated official at the time a license is issued; and

(II) a different principal or designated official if:

(Aa) a broker-dealer changes its principal; or

(Bb) an investment adviser changes its designated official.

(C) A principal or designated official identified in Subsection (1)(e)(v)(A) is not required to be separately licensed with the division.

(2) Except with respect to a federal covered adviser whose only clients are those described in Subsection 61-1-3(3)(b) or (3)(c)(iii), a federal covered adviser shall file with the division, before acting as a federal covered adviser in this state, a notice filing consisting of the documents filed with the Securities and Exchange Commission as the division by rule or order may require.

(3) (a) An applicant for an initial or renewal license as a broker-dealer or agent shall pay a reasonable filing fee as determined under Section 61-1-18.4.

(b) An applicant for an initial or renewal license as an investment adviser or investment adviser representative who is subject to licensing under this chapter shall pay a reasonable filing fee as determined under Section 61-1-18.4.

(c) A person acting as a federal covered adviser in this state shall pay an initial and renewal notice filing fee as determined under Section 61-1-18.4.

(d) If the license or renewal is not granted or the application is withdrawn, the division shall retain the fee.

(4) A licensed broker-dealer or investment adviser may file an application for licensing of a successor for the unexpired portion of the year. There shall be no filing fee.

(5) The division may by rule or order:

(a) require a minimum capital for a licensed broker-dealer, subject to the limitations of Section 15 of the Securities Exchange Act of 1934; and

(b) establish minimum financial requirements for an investment adviser:

(i) subject to the limitations of Section 222 of the Investment Advisers Act of 1940; and

(ii) which may include different requirements for an investment adviser who maintains custody of or has discretionary authority over client funds or securities and an

investment adviser who does not.

(6) (a) The division may by rule or order require a licensed broker-dealer or investment adviser who has custody of or discretionary authority over client funds or securities to post one or more bonds in amounts and under conditions as the division may prescribe, subject to the limitations of Section 15 of the Securities Exchange Act of 1934 for a broker-dealer, and Section 222 of the Investment Advisers Act of 1940 for an investment adviser.

(b) An appropriate deposit of cash or securities may be accepted in lieu of a required bond.

(c) A bond may not be required of a licensee whose net capital, or in the case of an investment adviser whose minimum financial requirements, which may be defined by rule, exceeds the amounts required by the division.

(d) A bond shall provide for suit on the bond by a person who has a cause of action under Section 61-1-22 and, if the division by rule or order requires, by any person who has a cause of action not arising under this chapter.

(e) A bond shall provide that a suit may not be maintained to enforce liability on the bond unless brought before the earlier of:

(i) the expiration of five years after the act or transaction constituting the violation; or

(ii) the expiration of two years after the discovery by the plaintiff of the facts constituting the violation.

Amended by Chapter 426, 2013 General Session

#### **61-1-5. Postlicensing provisions.**

(1) (a) Every licensed broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the division by rule prescribes, except as provided in:

(i) Section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer; and

(ii) Section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser.

(b) All required records regarding an investment adviser shall be preserved for the period as the division prescribes by rule or order.

(2) (a) Every licensed broker-dealer shall, within 24 hours after demand, furnish to any customer or principal for whom the broker-dealer has executed any order for the purchase or sale of any securities, either for immediate or future delivery, a written statement showing:

(i) the time when the securities were bought and sold;

(ii) the place where the securities were bought and sold; and

(iii) the price at which the securities were bought and sold.

(b) With respect to investment advisers, the division may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients.

(c) To the extent determined by the director, information furnished to clients or prospective clients of an investment adviser who would be in compliance with the

Investment Advisers Act of 1940 and the rules under the Investment Advisers Act of 1940 may be considered to satisfy this requirement.

(3) Every licensed broker-dealer and investment adviser shall file financial reports as the division by rule prescribes, except as provided in:

(a) Section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer; and

(b) Section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser.

(4) If the information contained in any document filed with the division is or becomes inaccurate or incomplete in any material respect, the licensee or federal covered adviser shall promptly file a correcting amendment if the document is filed with respect to a licensee, or when such amendment is required to be filed with the Securities and Exchange Commission if the document is filed with respect to a federal covered adviser, unless notification of the correction has been given under Section 61-1-3.

(5) (a) All the records referred to in Subsection (1) are subject at any time or from time to time to reasonable periodic, special, or other examinations by representatives of the division, within or without this state, as the division considers necessary or appropriate in the public interest or for the protection of investors.

(b) For the purpose of avoiding unnecessary duplication of examination, the division may cooperate with:

- (i) the securities administrators of other states;
- (ii) the Securities and Exchange Commission; and
- (iii) national securities exchanges or national securities associations registered under the Securities Exchange Act of 1934.

Amended by Chapter 292, 2007 General Session

**61-1-6. Denial, suspension, revocation, cancellation, or withdrawal of license -- Sanctions.**

(1) Subject to the other provisions of this section and by means of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act:

- (a) the commission may issue an order:
  - (i) suspending or revoking a license;
  - (ii) barring or censuring a licensee or an officer, director, partner, or person occupying a similar status or performing similar functions for a licensee from employment with a licensed broker-dealer or investment adviser;
  - (iii) restricting or limiting a licensee as to a function or activity of the business for which a license is required in this state;
  - (iv) imposing a fine; or
  - (v) taking any combination of actions under this Subsection (1)(a); or
- (b) the director may deny a license.

(2) (a) The commission may impose a sanction in accordance with Subsection (1)(a) or the director may impose a sanction in accordance with Subsection (1)(b) if the commission or director finds:

(i) that it is in the public interest; and  
(ii) with respect to the applicant or licensee or, in the case of a broker-dealer or investment adviser, a partner, officer, or director, or a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the broker-dealer or investment adviser, that the person:

(A) has filed an application for a license that, as of the effective date of the application or as of any date after filing in the case of an order denying effectiveness:

(I) was incomplete in a material respect; or

(II) contained a statement that was, in light of the circumstances under which it was made, false or misleading with respect to a material fact;

(B) has willfully violated or willfully failed to comply with this chapter or a predecessor act or a rule or order under this chapter or a predecessor act;

(C) was convicted of, or entered a plea of guilty, a plea of no contest, a plea in abeyance, or a similar plea of guilty to:

(I) a misdemeanor involving:

(Aa) fraud or dishonesty; or

(Bb) a security or any aspect of the securities business; or

(II) a felony;

(D) is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing a conduct or practice involving any aspect of the securities business;

(E) (I) is the subject of an order of the commission or a predecessor suspending or revoking a license as a broker-dealer, agent, investment adviser, or investment adviser representative; or

(II) is the subject of an order of the director or a predecessor denying a license as a broker-dealer, agent, investment adviser, or investment adviser representative;

(F) subject to Subsection (2)(b), is the subject of:

(I) an adjudication or determination, within the past five years by a securities or commodities agency or administrator of another state, Canadian province or territory, or a court of competent jurisdiction that the person has willfully violated:

(Aa) the Securities Act of 1933;

(Bb) the Securities Exchange Act of 1934;

(Cc) the Investment Advisers Act of 1940;

(Dd) the Investment Company Act of 1940;

(Ee) the Commodity Exchange Act; or

(Ff) the securities or commodities law of another state; or

(II) an order:

(Aa) entered within the past five years by the securities administrator of a state or Canadian province or territory or by the Securities and Exchange Commission denying or revoking a license as a broker-dealer, agent, investment adviser, or investment adviser representative, or the substantial equivalent of those terms;

(Bb) of the Securities and Exchange Commission suspending or expelling the person from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934; or

(Cc) that is a United States post office fraud order;

(G) has engaged in dishonest or unethical practices in the securities business;



(H) is insolvent, either in the sense that liabilities exceed assets or in the sense that obligations cannot be met as they mature, except that the director or commission may not enter an order against a broker-dealer or investment adviser under this Subsection (2)(a)(ii)(H) without a finding of insolvency as to the broker-dealer or investment adviser;

(I) is not qualified on the basis of the lack of training, experience, and knowledge of the securities business, except as otherwise provided in Subsection (5);

(J) has failed reasonably to supervise the person's:

(I) agents or employees, if the person is a broker-dealer; or

(II) investment adviser representatives or employees, if the person is an investment adviser;

(K) has failed to pay the proper filing fee within 30 days after being notified by the division of a deficiency;

(L) subject to Subsection (2)(c), is a licensee or applicant that is materially the same entity as an entity that is defunct, insolvent, statutorily disqualified, barred, or described in Subsection (2)(a)(ii)(D); or

(M) has had a final judgment entered against the person in a civil action on grounds of:

(I) fraud;

(II) embezzlement;

(III) misrepresentation; or

(IV) deceit.

(b) (i) The commission may not commence an agency action to revoke or suspend a license under Subsection (2)(a)(ii)(F) more than one year from the day on which the order on which the division relies is entered.

(ii) The commission or director may not enter an order under Subsection (2)(a)(ii)(F) on the basis of an order under another state's law unless that order is issued on the basis of facts that would constitute a ground for an agency action under this section on the day on which the notice of agency action is filed.

(c) (i) For purposes of Subsection (2)(a)(ii)(L), the director or commission may consider one or more factors in determining whether an entity is materially the same as another entity including the following:

(A) the entity has one or more of the same executive officers as the prior entity;

(B) the entity conducts operations in the same location as the prior entity;

(C) the entity employs two or more agents from the prior entity;

(D) the entity solicits or serves two or more customers of the prior entity;

(E) the entity has a name similar to the prior entity; or

(F) another factor showing a relationship between the entity and the prior entity.

(ii) In addition to imposing a sanction in accordance with Subsection (1), for an entity that is materially the same as an entity described in Subsection (2)(a)(ii)(L), the director or the commission may:

(A) limit the license of the entity; or

(B) require additional disclosures to the customers or employees of the entity.

(3) The director may enter a denial order under Subsection (2)(a)(ii)(K), but shall vacate the order when the deficiency is corrected.

(4) The division may not institute a suspension or revocation proceeding on the

basis of a fact or transaction known to the division when the license became effective unless the proceeding is instituted within the 120 days after the day on which the license takes effect.

(5) The following provisions govern the application of Subsection (2)(a)(ii)(I):

(a) The director or commission may not enter an order against a broker-dealer on the basis of the lack of qualification of a person other than:

- (i) the broker-dealer if the broker-dealer is an individual; or
- (ii) an agent of the broker-dealer.

(b) The director or commission may not enter an order against an investment adviser on the basis of the lack of qualification of a person other than:

- (i) the investment adviser if the investment adviser is an individual; or
- (ii) an investment adviser representative.

(c) The director or commission may not enter an order solely on the basis of lack of experience if the applicant or licensee is qualified by training or knowledge.

(d) The director or commission shall consider that:

- (i) an agent who will work under the supervision of a licensed broker-dealer need not have the same qualifications as a broker-dealer; and
- (ii) an investment adviser representative who will work under the supervision of a licensed investment adviser need not have the same qualifications as an investment adviser.

(e) (i) The director or commission shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent.

(ii) When the director finds that an applicant for a license as a broker-dealer is not qualified as an investment adviser, the director may condition the applicant's license as a broker-dealer upon the applicant's not transacting business in this state as an investment adviser.

(f) (i) The division may by rule provide for examinations, which may be written or oral or both, to be taken by any class of or all applicants.

(ii) The division may by rule or order waive the examination requirement as to a person or class of persons if the division determines that the examination is not necessary for the protection of investors.

(6) If the director finds that a licensee or applicant for a license is no longer in existence, has ceased to do business as a broker-dealer, agent, investment adviser, or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the division may summarily cancel or deny the license or application according to the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(7) (a) Withdrawal from license as a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective 30 days after receipt of an application to withdraw or within a shorter period of time as determined by the director, unless:

(i) a revocation or suspension proceeding is pending when the application is filed;

(ii) a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within 30 days after the application is filed; or

(iii) additional information is requested by the division regarding the withdrawal application.

(b) (i) If a proceeding described in Subsection (7)(a) is pending or instituted, the director shall designate by order when and under what conditions the withdrawal becomes effective.

(ii) If additional information is requested, withdrawal is effective 30 days after the additional information is filed.

(c) (i) If no proceeding is pending or instituted, and withdrawal automatically becomes effective, the director may initiate a revocation or suspension proceeding under this section within one year after withdrawal becomes effective.

(ii) The commission shall enter an order under Subsection (2)(a)(ii)(B) as of the last date on which the license is effective.

Amended by Chapter 351, 2009 General Session

**61-1-6.5. Court-ordered discipline.**

The division shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this chapter if so ordered by a court.

Enacted by Chapter 232, 1997 General Session

**61-1-7. Registration before sale.**

It is unlawful for any person to offer or sell any security in this state unless it is registered under this chapter, the security or transaction is exempted under Section 61-1-14, or the security is a federal covered security for which a notice filing has been made pursuant to the provisions of Section 61-1-15.5.

Amended by Chapter 160, 1997 General Session

**61-1-9. Registration by coordination.**

(1) A security for which a registration statement or a notification under Regulation A or a successor to Regulation A is filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Subsection 61-1-11(3) and the consent to service of process required by Section 61-1-26:

(a) one copy of the disclosure statement together with all its amendments filed under the Securities Act of 1933;

(b) if the division by rule or otherwise requires, a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered and a specimen or copy of the security;

(c) if the division requests, any other information, or copies of any other documents, filed under the Securities Act of 1933; and

(d) an undertaking to forward all future amendments to the disclosure statement promptly and in any event not later than the first working day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

(3) A registration statement under this section automatically becomes effective at the moment the disclosure statement becomes effective if all the following conditions are satisfied:

(a) no stop order is in effect and no proceeding is pending under Section 61-1-12;

(b) the disclosure statement is on file with the division for at least 20 working days; and

(c) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions is on file for two full working days or such shorter period as the division permits by rule or otherwise and the offering is made within those limitations.

(4) (a) A registrant shall promptly:

(i) notify the division in a record of the date and time when the disclosure statement became effective and the content of the price amendment, if any; and

(ii) file a posteffective amendment containing the information and documents in the price amendment.

(b) "Price amendment" means the final federal amendment that includes a statement of the:

(i) offering price;

(ii) underwriting and selling discounts or commissions;

(iii) amount of proceeds;

(iv) conversion rates;

(v) call prices; and

(vi) other matters dependent upon the offering price.

(5) (a) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment, the division may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with Subsection (4), if the division promptly notifies the registrant in a record of the issuance of the order.

(b) If the registrant proves compliance with the requirements of Subsection (4) as to notice and posteffective amendment, the stop order is void as of the time of its entry.

(6) The division may by rule or otherwise waive either or both of the conditions specified in Subsections (3)(b) and (3)(c).

(7) If the disclosure statement becomes effective before all the conditions in Subsections (3)(b) and (3)(c) are satisfied and they are not waived, the disclosure statement automatically becomes effective as soon as all the conditions are satisfied.

(8) If the registrant advises the division of the date when the disclosure statement is expected to become effective, the division shall promptly advise the registrant in a record, at the registrant's expense, whether all the conditions are satisfied and whether it then contemplates the institution of proceedings under Section 61-1-12, but this advice by the division does not preclude the institution of such a

proceeding at any time.

(9) The division may by rule or order permit registration by coordination of a security for which a notification or similar document is filed under the Securities Act of 1933 in connection with the same offering.

Amended by Chapter 351, 2009 General Session

**61-1-10. Registration by qualification.**

(1) Application may be made to register any security by qualification.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Subsection 61-1-11(3) and the consent to service of process required by Section 61-1-26:

(a) with respect to the issuer and any significant subsidiary:

(i) its name, address, and form of organization;

(ii) the state or foreign jurisdiction and date of its organization;

(iii) the general character and location of its business;

(iv) a description of its physical properties and equipment; and

(v) a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(b) with respect to every director and officer of the issuer or person occupying a similar status or performing similar functions:

(i) his name, address, and principal occupation for the past five years;

(ii) the amount of securities of the issuer held by him as of a specified date within 30 days of the filing of the registration statement;

(iii) the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and

(iv) a description of any material interest in any material transaction with the issuer or any significant subsidiary affected within the past three years or proposed to be affected;

(c) with respect to persons covered by Subsection (2)(b), the remuneration paid during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, together with all predecessors, parents, subsidiaries, and affiliates, to all those persons in the aggregate;

(d) with respect to any person owning of record, or beneficially if known, 10% or more of the outstanding shares of any class of equity security of the issuer, the information specified in Subsection (2)(b) other than the person's occupation;

(e) with respect to every promoter if the issuer was organized within the past three years, the information specified in Subsection (2)(b), any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for any such payment;

(f) with respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution:

(i) the person's name and address;

(ii) the amount of securities of the issuer held by the person as of the date of filing of the registration statement;

(iii) a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected; and

(iv) a statement of the person's reasons for making the offering;

(g) the capitalization and long-term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else, for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(h) (i) the kind and amount of securities to be offered;

(ii) the proposed offering price or the method by which it is to be computed;

(iii) any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class;

(iv) the basis upon which the offering is to be made if otherwise than for cash;

(v) the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts;

(vi) the estimated amounts of other selling expenses, including legal, engineering, and accounting charges;

(vii) the name and address of every underwriter and every recipient of a finder's fee;

(viii) a copy of any underwriting or selling-group agreement under which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and

(ix) a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(i) (i) the estimated cash proceeds to be received by the issuer from the offering;

(ii) the purposes for which the proceeds are to be used by the issuer;

(iii) the amount to be used for each purpose;

(iv) the order or priority in which the proceeds will be used for the purposes stated;

(v) the amounts of any funds to be raised from other sources to achieve the purposes stated and the sources of any such funds; and

(vi) if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

(j) a description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such option

held or to be held by every person required to be named in Subsection (2)(b), (d), (e), (f), or (h) and by any person who holds or will hold 10% or more in the aggregate of any such options;

(k) (i) the dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract; and

(ii) a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets, including any such litigation or proceeding known to be contemplated by governmental authorities;

(l) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;

(m) (i) a specimen copy of the security being registered;

(ii) a copy of the issuer's articles of incorporation, and bylaws, if any, or their substantial equivalents, as currently in effect; and

(iii) a copy of any indenture or other instrument covering the security to be registered;

(n) a signed or conformed copy of an opinion of counsel as to the legality of the security being registered, with an English translation if it is in a foreign language, which shall state whether the security when sold will be legally issued, fully paid, and nonassessable, and if a debt security, a binding obligation of the issuer;

(o) the written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if that person is named as having prepared or certified a report or valuation, other than a public and official document or statement, which is used in connection with the registration statement;

(p) (i) a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement;

(ii) a profit and loss statement and analysis of retained earnings for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than three years; and

(iii) if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and

(q) such additional information or verification of any statement as the division requires by rule or order.

(3) A registration statement under this section becomes effective when the division so orders.

(4) As a condition of registration under this section, a prospectus containing the information, but not containing copies of contracts or agreements specified in Subsections (2)(a) through (k) and (p) shall be sent or given to each person to whom an offer is made before or concurrently with:

(a) the first written offer made to the person, otherwise than by means of a public advertisement, by or for the account of the issuer or any other person on whose

behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;

- (b) the confirmation of any sale made by or for the account of any such person;
- (c) payment pursuant to any such sale; or
- (d) delivery of the security pursuant to any such sale, whichever occurs first.

Amended by Chapter 340, 2011 General Session

**61-1-11. Provisions applicable to registration generally.**

(1) A registration statement may be filed by the issuer, another person on whose behalf the offering is to be made, or a licensed broker-dealer.

(2) A person filing a registration statement shall pay a filing fee as determined under Section 61-1-18.4.

(3) A registration statement shall specify:

- (a) the amount of securities to be offered in this state;
- (b) the states in which a registration statement or similar document in connection with the offering is or is to be filed; and
- (c) an adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by a court or the Securities and Exchange Commission.

(4) A document filed under this chapter or a predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

(5) The division may permit the omission of an item of information or document from a registration statement.

(6) In the case of a nonissuer distribution, information may not be required under Subsection (9) or Section 61-1-10 unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(7) (a) The division may require as a condition of registration by qualification or coordination:

- (i) that security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to a person for a consideration other than cash, be deposited in escrow; and
- (ii) that the proceeds from the sale of the registered security be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.

(b) The division may determine the conditions of an escrow or impounding required by this Subsection (7), but it may not reject a depository solely because of location in another state.

(8) (a) A registration statement is effective for one year from its effective date.

(b) All outstanding securities of the same class as a registered security are considered to be registered for the purpose of a nonissuer transaction:

- (i) so long as the registration statement is effective; and
- (ii) between the 30th day after the entry of a stop order suspending or revoking



the effectiveness of the registration statement under Section 61-1-12, if the registration statement did not relate in whole or in part to a nonissuer distribution, and one year from the effective date of the registration statement.

(c) A registration statement may not be withdrawn for one year from its effective date if a security of the same class is outstanding.

(d) A registration statement may be withdrawn otherwise only in the discretion of the division.

(9) So long as a registration statement is effective and the offering is not completely sold, the division may require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

(10) (a) A registration statement may be amended after its effective date so as to increase the securities specified to be offered and sold, if the public offering price and underwriters' discounts and commissions are not changed from the respective amounts of which the division was informed.

(b) The amendment becomes effective when the division so orders.

(c) A person filing an amendment shall pay a registration fee as determined under Section 61-1-18.4 with respect to the additional securities proposed to be offered.

(d) The amendment relates back to the date of the sale of the additional security being registered, provided that within six months of the date of the sale the amendment is filed and the additional registration fee is paid.

(11) (a) A security that is offered or sold under Section 4(5) of the Securities Act of 1933 or that is a "mortgage related security" as defined in Section 3(a)(41) of the Securities Exchange Act of 1934 may not be exempt under Subsection 61-1-14(1)(a) to the same extent as an obligation issued by or guaranteed as to principal and interest by the United States or an agency or instrumentality of the United States. Accordingly, any such security shall comply with the applicable registration and qualification requirements set forth in this chapter.

(b) This Subsection (11) specifically overrides the preemption of state law contained in Section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984, Public Law Number 98-440.

Amended by Chapter 351, 2009 General Session

#### **61-1-11.1. Hearings for certain exchanges of securities.**

(1) An application may be made to the division for approval to issue securities or to deliver other consideration in exchange for:

(a) one or more outstanding securities, claims, or property interests; or

(b) partly in exchange for one or more outstanding securities, claims, or property interests, and partly for cash.

(2) The director may:

(a) hold a hearing upon the fairness of the terms and conditions of an exchange described in Subsection (1); and

(b) approve or disapprove the terms and conditions of an exchange described in Subsection (1).

(3) After conducting a hearing under this section, if the director finds that the

terms and conditions of an exchange described in Subsection (1) are fair to those to whom the securities will be issued, the director may:

(a) approve the fairness of the terms and conditions of the exchange described in Subsection (1); and

(b) approve the exchange described in Subsection (1).

(4) In a hearing under this section, all persons to whom it is proposed to issue securities or to deliver other consideration in an exchange under Subsection (1) may appear.

(5) An application under Subsection (1) shall contain the information and be accompanied by the documents required by rule or order of the division.

(6) A person filing an application under Subsection (1) shall pay a filing fee as determined under Section 61-1-18.4.

(7) An applicant under this section shall provide adequate notice of any hearing under this section to all persons that have a right to appear, under Subsection (4), at the hearing.

(8) An application may be made under this section regardless of whether the security or transaction being issued is:

(a) exempt from registration; or

(b) not required to be registered.

(9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may establish rules to govern the conduct of a hearing permitted by this section in accordance with Sections 61-1-18.5 and 61-1-24.

(10) This section is intended to provide for a fairness hearing that satisfies the requirements of Securities Act of 1933, Section 3(a)(10), 15 U.S.C. Section 77c(a)(10), or any comparable section that may subsequently be enacted.

Amended by Chapter 351, 2009 General Session

#### **61-1-12. Denial, suspension, and revocation of registration.**

(1) Upon approval by a majority of the commission, the director, by means of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, may issue a stop order that denies effectiveness to, or suspends or revokes the effectiveness of, any securities registration statement and may impose a fine if the director finds that the order is in the public interest and that:

(a) the registration statement, as of its effective date or as of any earlier date in the case of an order denying effectiveness, or an amendment under Subsection 61-1-11(10) as of its effective date, or a report under Subsection 61-1-11(9), is incomplete in a material respect, or contains a statement that was, in the light of the circumstances under which it was made, false or misleading with respect to a material fact;

(b) this chapter, or a rule, order, or condition lawfully imposed under this chapter, is willfully violated, in connection with the offering, by:

(i) the person filing the registration statement;

(ii) the issuer, a partner, officer, or director of the issuer, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is

directly or indirectly controlled by or acting for the issuer; or

(iii) an underwriter;

(c) subject to Subsection (5), the security registered or sought to be registered is the subject of an administrative stop order or similar order, or a permanent or temporary injunction of a court of competent jurisdiction entered under another federal or state act applicable to the offering;

(d) the issuer's enterprise or method of business includes or would include activities that are illegal where performed;

(e) the offering has worked or tended to work a fraud upon purchasers or would so operate;

(f) the offering is or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;

(g) when a security is sought to be registered by coordination, there is a failure to comply with the undertaking required by Subsection 61-1-9(2)(d); or

(h) the applicant or registrant has failed to pay the proper filing fee.

(2) The director may enter an order under this section but may vacate the order if the director finds that the conditions that prompted its entry have changed or that it is otherwise in the public interest to do so.

(3) The director may not issue a stop order against an effective registration statement on the basis of a fact or transaction known to the division when the registration statement became effective unless the proceeding is instituted within the 120 days after the day on which the registration statement becomes effective.

(4) A person may not be considered to have violated Section 61-1-7 or 61-1-15 by reason of an order or sale effected after the entry of an order under this section if that person proves by a preponderance of the evidence that the person did not know, and in the exercise of reasonable care could not have known, of the order.

(5) (a) The director may not commence agency action against an effective registration statement under Subsection (1)(c) more than one year from the day on which the order or injunction on which the director relies is issued.

(b) The director may not enter an order under Subsection (1)(c) on the basis of an order or injunction entered under the securities act of another state unless that order or injunction is issued on the basis of facts that would constitute a ground for a stop order under this section at the time the director commences the agency action.

Amended by Chapter 351, 2009 General Session

### **61-1-13. Definitions.**

(1) As used in this chapter:

(a) "Affiliate" means a person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with a person specified.

(b) (i) "Agent" means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

(ii) "Agent" does not include an individual who represents:

(A) an issuer, who receives no commission or other remuneration, directly or indirectly, for effecting or attempting to effect purchases or sales of securities in this state, and who effects transactions:

(I) in securities exempted by Subsection 61-1-14(1)(a), (b), (c), or (g);

(II) exempted by Subsection 61-1-14(2);

(III) in a covered security as described in Sections 18(b)(3) and 18(b)(4)(D) of the Securities Act of 1933; or

(IV) with existing employees, partners, officers, or directors of the issuer; or

(B) a broker-dealer in effecting transactions in this state limited to those transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934.

(iii) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if the partner, officer, director, or person otherwise comes within the definition of "agent."

(iv) "Agent" does not include a person described in Subsection (3).

(c) (i) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.

(ii) "Broker-dealer" does not include:

(A) an agent;

(B) an issuer;

(C) a depository institution or trust company;

(D) a person who has no place of business in this state if:

(I) the person effects transactions in this state exclusively with or through:

(Aa) the issuers of the securities involved in the transactions;

(Bb) other broker-dealers;

(Cc) a depository institution, whether acting for itself or as a trustee;

(Dd) a trust company, whether acting for itself or as a trustee;

(Ee) an insurance company, whether acting for itself or as a trustee;

(Ff) an investment company, as defined in the Investment Company Act of 1940, whether acting for itself or as a trustee;

(Gg) a pension or profit-sharing trust, whether acting for itself or as a trustee; or

(Hh) another financial institution or institutional buyer, whether acting for itself or as a trustee; or

(II) during any period of 12 consecutive months the person does not direct more than 15 offers to sell or buy into this state in any manner to persons other than those specified in Subsection (1)(c)(ii)(D)(I), whether or not the offeror or an offeree is then present in this state;

(E) a general partner who organizes and effects transactions in securities of three or fewer limited partnerships, of which the person is the general partner, in any period of 12 consecutive months;

(F) a person whose participation in transactions in securities is confined to those transactions made by or through a broker-dealer licensed in this state;

(G) a person who is a principal broker or associate broker licensed in this state and who effects transactions in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a

unit;

(H) a person effecting transactions in commodity contracts or commodity options;

(I) a person described in Subsection (3); or

(J) other persons as the division, by rule or order, may designate, consistent with the public interest and protection of investors, as not within the intent of this Subsection (1)(c).

(d) "Buy" or "purchase" means a contract for purchase of, contract to buy, or acquisition of a security or interest in a security for value.

(e) "Commission" means the Securities Commission created in Section 61-1-18.5.

(f) "Commodity" means, except as otherwise specified by the division by rule:

(i) an agricultural, grain, or livestock product or byproduct, except real property or a timber, agricultural, or livestock product grown or raised on real property and offered or sold by the owner or lessee of the real property;

(ii) a metal or mineral, including a precious metal, except a numismatic coin whose fair market value is at least 15% greater than the value of the metal it contains;

(iii) a gem or gemstone, whether characterized as precious, semi-precious, or otherwise;

(iv) a fuel, whether liquid, gaseous, or otherwise;

(v) a foreign currency; and

(vi) all other goods, articles, products, or items of any kind, except a work of art offered or sold by art dealers, at public auction or offered or sold through a private sale by the owner of the work.

(g) (i) "Commodity contract" means an account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise.

(ii) A commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes.

(iii) (A) A commodity contract may not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days from the payment in good funds any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

(B) A purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(h) (i) "Commodity option" means an account, agreement, or contract giving a party to the option the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, or both whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or

otherwise.

(ii) "Commodity option" does not include an option traded on a national securities exchange registered:

(A) with the Securities and Exchange Commission; or

(B) on a board of trade designated as a contract market by the Commodity Futures Trading Commission.

(i) "Depository institution" is as defined in Section 7-1-103.

(j) "Director" means the director of the division appointed in accordance with Section 61-1-18.

(k) "Division" means the Division of Securities established by Section 61-1-18.

(l) "Executive director" means the executive director of the Department of Commerce.

(m) "Federal covered adviser" means a person who:

(i) is registered under Section 203 of the Investment Advisers Act of 1940; or

(ii) is excluded from the definition of "investment adviser" under Section 202(a)(11) of the Investment Advisers Act of 1940.

(n) "Federal covered security" means a security that is a covered security under Section 18(b) of the Securities Act of 1933 or rules or regulations promulgated under Section 18(b) of the Securities Act of 1933.

(o) "Fraud," "deceit," and "defraud" are not limited to their common-law meanings.

(p) "Guaranteed" means guaranteed as to payment of principal or interest as to debt securities, or dividends as to equity securities.

(q) (i) "Investment adviser" means a person who:

(A) for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities; or

(B) for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(ii) "Investment adviser" includes a financial planner or other person who:

(A) as an integral component of other financially related services, provides the investment advisory services described in Subsection (1)(q)(i) to others for compensation and as part of a business; or

(B) holds the person out as providing the investment advisory services described in Subsection (1)(q)(i) to others for compensation.

(iii) "Investment adviser" does not include:

(A) an investment adviser representative;

(B) a depository institution or trust company;

(C) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of the profession;

(D) a broker-dealer or its agent whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for the services;

(E) a publisher of a bona fide newspaper, news column, news letter, news magazine, or business or financial publication or service, of general, regular, and paid circulation, whether communicated in hard copy form, or by electronic means, or

otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(F) a person who is a federal covered adviser;

(G) a person described in Subsection (3); or

(H) such other persons not within the intent of this Subsection (1)(q) as the division may by rule or order designate.

(r) (i) "Investment adviser representative" means a partner, officer, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, who:

(A) (I) is employed by or associated with an investment adviser who is licensed or required to be licensed under this chapter; or

(II) has a place of business located in this state and is employed by or associated with a federal covered adviser; and

(B) does any of the following:

(I) makes a recommendation or otherwise renders advice regarding securities;

(II) manages accounts or portfolios of clients;

(III) determines which recommendation or advice regarding securities should be given;

(IV) solicits, offers, or negotiates for the sale of or sells investment advisory services; or

(V) supervises employees who perform any of the acts described in this Subsection (1)(r)(i)(B).

(ii) "Investment adviser representative" does not include a person described in Subsection (3).

(s) "Investment contract" includes:

(i) an investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor; or

(ii) an investment by which:

(A) an offeree furnishes initial value to an offerer;

(B) a portion of the initial value is subjected to the risks of the enterprise;

(C) the furnishing of the initial value is induced by the offerer's promises or representations that give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise; and

(D) the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.

(t) "Isolated transaction" means not more than a total of two transactions that occur anywhere during six consecutive months.

(u) (i) "Issuer" means a person who issues or proposes to issue a security or has outstanding a security that it has issued.

(ii) With respect to a preorganization certificate or subscription, "issuer" means the one or more promoters of the person to be organized.

(iii) "Issuer" means the one or more persons performing the acts and assuming duties of a depositor or manager under the provisions of the trust or other agreement or instrument under which the security is issued with respect to:

(A) interests in trusts, including collateral trust certificates, voting trust

certificates, and certificates of deposit for securities; or

(B) shares in an investment company without a board of directors.

(iv) With respect to an equipment trust certificate, a conditional sales contract, or similar securities serving the same purpose, "issuer" means the person by whom the equipment or property is to be used.

(v) With respect to interests in partnerships, general or limited, "issuer" means the partnership itself and not the general partner or partners.

(vi) With respect to certificates of interest or participation in oil, gas, or mining titles or leases or in payment out of production under the titles or leases, "issuer" means the owner of the title or lease or right of production, whether whole or fractional, who creates fractional interests therein for the purpose of sale.

(v) (i) "Life settlement interest" means the entire interest or a fractional interest in any of the following that is the subject of a life settlement:

(A) a policy; or

(B) the death benefit under a policy.

(ii) "Life settlement interest" does not include the initial purchase from the owner by a life settlement provider.

(w) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(x) "Person" means:

(i) an individual;

(ii) a corporation;

(iii) a partnership;

(iv) a limited liability company;

(v) an association;

(vi) a joint-stock company;

(vii) a joint venture;

(viii) a trust where the interests of the beneficiaries are evidenced by a security;

(ix) an unincorporated organization;

(x) a government; or

(xi) a political subdivision of a government.

(y) "Precious metal" means the following, whether in coin, bullion, or other form:

(i) silver;

(ii) gold;

(iii) platinum;

(iv) palladium;

(v) copper; and

(vi) such other substances as the division may specify by rule.

(z) "Promoter" means a person who, acting alone or in concert with one or more persons, takes initiative in founding or organizing the business or enterprise of a person.

(aa) (i) Except as provided in Subsection (1)(aa)(ii), "record" means information that is:

(A) inscribed in a tangible medium; or

(B) (I) stored in an electronic or other medium; and

(II) retrievable in perceivable form.

(ii) This Subsection (1)(aa) does not apply when the context requires otherwise,



including when "record" is used in the following phrases:

- (A) "of record";
- (B) "official record"; or
- (C) "public record."

(bb) (i) "Sale" or "sell" includes a contract for sale of, contract to sell, or disposition of, a security or interest in a security for value.

(ii) "Offer" or "offer to sell" includes an attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(iii) The following are examples of the definitions in Subsection (1)(bb)(i) or (ii):

(A) a security given or delivered with or as a bonus on account of a purchase of a security or any other thing, is part of the subject of the purchase, and is offered and sold for value;

(B) a purported gift of assessable stock is an offer or sale as is each assessment levied on the stock;

(C) an offer or sale of a security that is convertible into, or entitles its holder to acquire or subscribe to another security of the same or another issuer is an offer or sale of that security, and also an offer of the other security, whether the right to convert or acquire is exercisable immediately or in the future;

(D) a conversion or exchange of one security for another constitutes an offer or sale of the security received in a conversion or exchange, and the offer to buy or the purchase of the security converted or exchanged;

(E) securities distributed as a dividend wherein the person receiving the dividend surrenders the right, or the alternative right, to receive a cash or property dividend is an offer or sale;

(F) a dividend of a security of another issuer is an offer or sale; or

(G) the issuance of a security under a merger, consolidation, reorganization, recapitalization, reclassification, or acquisition of assets constitutes the offer or sale of the security issued as well as the offer to buy or the purchase of a security surrendered in connection therewith, unless the sole purpose of the transaction is to change the issuer's domicile.

(iv) The terms defined in Subsections (1)(bb)(i) and (ii) do not include:

- (A) a good faith gift;
- (B) a transfer by death;
- (C) a transfer by termination of a trust or of a beneficial interest in a trust;
- (D) a security dividend not within Subsection (1)(bb)(iii)(E) or (F); or
- (E) a securities split or reverse split.

(cc) "Securities Act of 1933," "Securities Exchange Act of 1934," and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after the effective date of this chapter.

(dd) "Securities Exchange Commission" means the United States Securities Exchange Commission created by the Securities Exchange Act of 1934.

(ee) (i) "Security" means a:

- (A) note;
- (B) stock;
- (C) treasury stock;
- (D) bond;

(E) debenture;  
(F) evidence of indebtedness;  
(G) certificate of interest or participation in a profit-sharing agreement;  
(H) collateral-trust certificate;  
(I) preorganization certificate or subscription;  
(J) transferable share;  
(K) investment contract;  
(L) burial certificate or burial contract;  
(M) voting-trust certificate;  
(N) certificate of deposit for a security;  
(O) certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease;  
(P) commodity contract or commodity option;  
(Q) interest in a limited liability company;  
(R) life settlement interest; or  
(S) in general, an interest or instrument commonly known as a "security," or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase an item listed in Subsections (1)(ee)(i)(A) through (R).

(ii) "Security" does not include:

(A) an insurance or endowment policy or annuity contract under which an insurance company promises to pay money in a lump sum or periodically for life or some other specified period;

(B) an interest in a limited liability company in which the limited liability company is formed as part of an estate plan where all of the members are related by blood or marriage, or the person claiming this exception can prove that all of the members are actively engaged in the management of the limited liability company; or

(C) (I) a whole long-term estate in real property;

(II) an undivided fractionalized long-term estate in real property that consists of 10 or fewer owners; or

(III) an undivided fractionalized long-term estate in real property that consists of more than 10 owners if, when the real property estate is subject to a management agreement:

(Aa) the management agreement permits a simple majority of owners of the real property estate to not renew or to terminate the management agreement at the earlier of the end of the management agreement's current term, or 180 days after the day on which the owners give notice of termination to the manager;

(Bb) the management agreement prohibits, directly or indirectly, the lending of the proceeds earned from the real property estate or the use or pledge of its assets to a person or entity affiliated with or under common control of the manager; and

(Cc) the management agreement complies with any other requirement imposed by rule by the Real Estate Commission under Section 61-2f-103.

(iii) For purposes of Subsection (1)(ee)(ii)(B), evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company, or the right to participate in management, may not establish, without more, that all members are actively engaged in the management of

the limited liability company.

(ff) "State" means a state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.

(gg) (i) "Undivided fractionalized long-term estate" means an ownership interest in real property by two or more persons that is:

(A) a tenancy in common; or

(B) a fee estate.

(ii) "Undivided fractionalized long-term estate" does not include a joint tenancy.

(hh) "Undue influence" means that a person uses a relationship or position of authority, trust, or confidence:

(i) that is unrelated to a relationship created:

(A) in the ordinary course of making investments regulated under this chapter;

or

(B) by a licensee providing services under this chapter;

(ii) that results in:

(A) an investor perceiving the person as having heightened credibility, personal trustworthiness, or dependability; or

(B) the person having special access to or control of an investor's financial resources, information, or circumstances; and

(iii) to:

(A) exploit the trust, dependence, or fear of the investor;

(B) knowingly assist or cause another to exploit the trust, dependence, or fear of the investor; or

(C) gain control deceptively over the decision making of the investor.

(ii) "Vulnerable adult" means an individual whose age or mental or physical impairment substantially affects that individual's ability to:

(i) manage the individual's resources; or

(ii) comprehend the nature and consequences of making an investment decision.

(jj) "Whole long-term estate" means a person owns or persons through joint tenancy own real property through a fee estate.

(kk) "Working days" means 8 a.m. to 5 p.m., Monday through Friday, exclusive of legal holidays listed in Section 63G-1-301.

(2) A term not defined in this section shall have the meaning as established by division rule. The meaning of a term neither defined in this section nor by rule of the division shall be the meaning commonly accepted in the business community.

(3) (a) This Subsection (3) applies to the offer or sale of a real property estate exempted from the definition of security under Subsection (1)(ee)(ii)(C).

(b) A person who, directly or indirectly receives compensation in connection with the offer or sale as provided in this Subsection (3) of a real property estate is not an agent, broker-dealer, investment adviser, or investment adviser representative under this chapter if that person is licensed under Chapter 2f, Real Estate Licensing and Practices Act, as:

(i) a principal broker;

(ii) an associate broker; or

(iii) a sales agent.

Amended by Chapter 317, 2011 General Session

Amended by Chapter 319, 2011 General Session

Amended by Chapter 354, 2011 General Session

**61-1-14. Exemptions.**

(1) The following securities are exempt from Sections 61-1-7 and 61-1-15:

(a) a security, including a revenue obligation, issued or guaranteed by the United States, a state, a political subdivision of a state, or an agency or corporate or other instrumentality of one or more of the foregoing, or a certificate of deposit for any of the foregoing;

(b) a security issued or guaranteed by Canada, a Canadian province, a political subdivision of a Canadian province, an agency or corporate or other instrumentality of one or more of the foregoing, or another foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(c) a security issued by and representing an interest in or a debt of, or guaranteed by, a depository institution organized under the laws of the United States, or a depository institution or trust company supervised under the laws of a state;

(d) a security issued or guaranteed by a public utility or a security regulated in respect of its rates or in its issuance by a governmental authority of the United States, a state, Canada, or a Canadian province;

(e) (i) a federal covered security specified in the Securities Act of 1933, Section 18(b)(1), 15 U.S.C. Section 77r(b)(1), or by rule adopted under that provision;

(ii) a security listed or approved for listing on another securities market specified by rule under this chapter;

(iii) any of the following with respect to a security described in Subsection (1)(e)(i) or (ii):

(A) a put or a call option contract;

(B) a warrant; or

(C) a subscription right on or with respect to the security;

(iv) an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency that is:

(A) registered under the Securities Exchange Act of 1934; and

(B) listed or designated for trading on a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934;

(v) an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or

(vi) an option or a derivative security designated by the Securities and Exchange Commission under Securities Exchange Act of 1934, Section 9(b), 15 U.S.C. Section 78i(b);

(f) (i) a security issued by a person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional

association; and

(ii) a security issued by a corporation organized under Title 3, Chapter 1, General Provisions Relating to Agricultural Cooperative Associations, and a security issued by a corporation to which that chapter is made applicable by compliance with Section 3-1-21;

(g) an investment contract issued in connection with an employees' stock purchase, option, savings, pension, profit-sharing, or similar benefit plan;

(h) a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940; and

(i) a security as to which the director, by rule or order, finds that registration is not necessary or appropriate for the protection of investors.

(2) The following transactions are exempt from Sections 61-1-7 and 61-1-15:

(a) an isolated nonissuer transaction, whether effected through a broker-dealer or not;

(b) a nonissuer transaction in an outstanding security, if as provided by rule of the division:

(i) information about the issuer of the security as required by the division is currently listed in a securities manual recognized by the division, and the listing is based upon such information as required by rule of the division; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there is no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security;

(c) a nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy;

(d) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(e) a transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(f) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(g) a transaction executed by a bona fide pledgee without a purpose of evading this chapter;

(h) an offer or sale to one of the following whether the purchaser is acting for itself or in a fiduciary capacity:

(i) a depository institution;

(ii) a trust company;

(iii) an insurance company;

(iv) an investment company as defined in the Investment Company Act of 1940;

(v) a pension or profit-sharing trust;

(vi) other financial institution or institutional investor; or

(vii) a broker-dealer;

(i) an offer or sale of a preorganization certificate or subscription if:

(i) no commission or other remuneration is paid or given directly or indirectly for

soliciting a prospective subscriber;

(ii) the number of subscribers acquiring a legal or beneficial interest therein does not exceed 10;

(iii) there is no general advertising or solicitation in connection with the offer or sale; and

(iv) no payment is made by a subscriber;

(j) subject to Subsection (6), a transaction pursuant to an offer by an issuer of its securities to its existing securities holders, if:

(i) no commission or other remuneration, other than a standby commission is paid or given directly or indirectly for soliciting a security holder in this state; and

(ii) the transaction constitutes:

(A) the conversion of convertible securities;

(B) the exercise of nontransferable rights or warrants;

(C) the exercise of transferable rights or warrants if the rights or warrants are exercisable not more than 90 days after their issuance;

(D) the purchase of securities under a preemptive right; or

(E) a transaction other than one specified in Subsections (2)(j)(ii)(A) through (D)

if:

(I) the division is furnished with:

(Aa) a general description of the transaction;

(Bb) the disclosure materials to be furnished to the issuer's securities holders in the transaction; and

(Cc) a non-refundable fee; and

(II) the division does not, by order, deny or revoke the exemption within 20 working days after the day on which the filing required by Subsection (2)(j)(ii)(E)(I) is complete;

(k) an offer, but not a sale, of a security for which a registration statement is filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending;

(l) a distribution of securities as a dividend if the person distributing the dividend is the issuer of the securities distributed;

(m) a nonissuer transaction effected by or through a registered broker-dealer where the broker-dealer or issuer files with the division, and the broker-dealer maintains in the broker-dealer's records, and makes reasonably available upon request to a person expressing an interest in a proposed transaction in the security with the broker-dealer information prescribed by the division under its rules;

(n) a transaction not involving a public offering;

(o) an offer or sale of "condominium units" or "time period units" as those terms are defined in Title 57, Chapter 8, Condominium Ownership Act, whether or not to be sold by installment contract, if the following are complied with:

(i) Title 57, Chapter 8, Condominium Ownership Act, or if the units are located in another state, the condominium act of that state;

(ii) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;

(iii) Title 57, Chapter 19, Timeshare and Camp Resort Act; and

(iv) Title 70C, Utah Consumer Credit Code;

(p) a transaction or series of transactions involving a merger, consolidation, reorganization, recapitalization, reclassification, or sale of assets, if the consideration for which, in whole or in part, is the issuance of securities of a person or persons, and if:

(i) the transaction or series of transactions is incident to a vote of the securities holders of each person involved or by written consent or resolution of some or all of the securities holders of each person involved;

(ii) the vote, consent, or resolution is given under a provision in:

(A) the applicable corporate statute or other controlling statute;

(B) the controlling articles of incorporation, trust indenture, deed of trust, or partnership agreement; or

(C) the controlling agreement among securities holders;

(iii) (A) one person involved in the transaction is required to file proxy or informational materials under Section 14(a) or (c) of the Securities Exchange Act of 1934 or Section 20 of the Investment Company Act of 1940 and has so filed;

(B) one person involved in the transaction is an insurance company that is exempt from filing under Section 12(g)(2)(G) of the Securities Exchange Act of 1934, and has filed proxy or informational materials with the appropriate regulatory agency or official of its domiciliary state; or

(C) all persons involved in the transaction are exempt from filing under Section 12(g)(1) of the Securities Exchange Act of 1934, and file with the division such proxy or informational material as the division requires by rule;

(iv) the proxy or informational material is filed with the division and distributed to all securities holders entitled to vote in the transaction or series of transactions at least 10 working days prior to any necessary vote by the securities holders or action on any necessary consent or resolution; and

(v) the division does not, by order, deny or revoke the exemption within 10 working days after filing of the proxy or informational materials;

(q) subject to Subsection (7), a transaction pursuant to an offer to sell securities of an issuer if:

(i) the transaction is part of an issue in which there are not more than 15 purchasers in this state, other than those designated in Subsection (2)(h), during any 12 consecutive months;

(ii) no general solicitation or general advertising is used in connection with the offer to sell or sale of the securities;

(iii) no commission or other similar compensation is given, directly or indirectly, to a person other than a broker-dealer or agent licensed under this chapter, for soliciting a prospective purchaser in this state;

(iv) the seller reasonably believes that all the purchasers in this state are purchasing for investment; and

(v) the transaction is part of an aggregate offering that does not exceed \$1,000,000, or a greater amount as prescribed by a division rule, during any 12 consecutive months;

(r) a transaction involving a commodity contract or commodity option;

(s) a transaction in a security, whether or not the security or transaction is otherwise exempt if:

(i) the transaction is:

(A) in exchange for one or more outstanding securities, claims, or property interests; or

(B) partly for cash and partly in exchange for one or more outstanding securities, claims, or property interests; and

(ii) the terms and conditions are approved by the director after a hearing under Section 61-1-11.1;

(t) a transaction incident to a judicially approved reorganization in which a security is issued:

(i) in exchange for one or more outstanding securities, claims, or property interests; or

(ii) partly for cash and partly in exchange for one or more outstanding securities, claims, or property interests;

(u) a nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others; and

(v) a transaction as to which the division finds that registration is not necessary or appropriate for the protection of investors.

(3) A person filing an exemption notice or application shall pay a filing fee as determined under Section 61-1-18.4.

(4) Upon approval by a majority of the commission, the director, by means of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, may deny or revoke an exemption specified in Subsection (1)(f) or (g) or in Subsection (2) with respect to:

(a) a specific security, transaction, or series of transactions; or

(b) a person or issuer, an affiliate or successor to a person or issuer, or an entity subsequently organized by or on behalf of a person or issuer generally and may impose a fine if the director finds that the order is in the public interest and that:

(i) the application for or notice of exemption filed with the division is incomplete in a material respect or contains a statement which was, in the light of the circumstances under which it was made, false or misleading with respect to a material fact;

(ii) this chapter, or a rule, order, or condition lawfully imposed under this chapter has been willfully violated in connection with the offering or exemption by:

(A) the person filing an application for or notice of exemption;

(B) the issuer, a partner, officer, or director of the issuer, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling or controlled by the issuer, but only if the person filing the application for or notice of exemption is directly or indirectly controlled by or acting for the issuer; or

(C) an underwriter;

(iii) subject to Subsection (8), the security for which the exemption is sought is the subject of an administrative stop order or similar order, or a permanent or temporary injunction or a court of competent jurisdiction entered under another federal or state act applicable to the offering or exemption;

(iv) the issuer's enterprise or method of business includes or would include activities that are illegal where performed;

(v) the offering has worked, has tended to work, or would operate to work a



fraud upon purchasers;

(vi) the offering is or was made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;

(vii) an exemption is sought for a security or transaction that is not eligible for the exemption; or

(viii) the proper filing fee, if required, has not been paid.

(5) (a) An order under Subsection (4) may not operate retroactively.

(b) A person may not be considered to have violated Section 61-1-7 or 61-1-15 by reason of an offer or sale effected after the entry of an order under this Subsection (5) if the person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the order.

(6) The exemption created by Subsection (2)(j) is not available for an offer or sale of a security to an existing securities holder who has acquired the holder's security from the issuer in a transaction in violation of Section 61-1-7.

(7) As to a security, a transaction, or a type of security or transaction, the division may:

(a) withdraw or further condition the exemption described in Subsection (2)(q);

or

(b) waive one or more of the conditions described in Subsection (2)(q).

(8) (a) The director may not institute a proceeding against an effective exemption under Subsection (4)(b) more than one year from the day on which the order or injunction on which the director relies is issued.

(b) The director may not enter an order under Subsection (4)(b) on the basis of an order or injunction entered under another state act unless that order or injunction is issued on the basis of facts that would constitute a ground for a stop order under this section at the time the director enters the order.

Amended by Chapter 218, 2010 General Session

#### **61-1-14.5. Burden of proving exemption.**

In any proceeding under this chapter, civil, criminal, administrative, or judicial, the burden of proving an exemption under Section 61-1-14 or an exception from a definition under Section 61-1-13 is upon the person claiming the exemption or exception.

Enacted by Chapter 284, 1983 General Session

#### **61-1-15. Filing of sales literature.**

The division may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser unless the security or transaction is exempted by Section 61-1-14 or is a federal covered security.

Amended by Chapter 160, 1997 General Session

**61-1-15.5. Federal covered securities.**

(1) The division by rule or order may require the filing of any of the following documents with respect to a covered security under Section 18(b)(2) of the Securities Act of 1933:

(a) prior to the initial offer of federal covered security in this state, a notice form as prescribed by the division or all documents that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, together with a consent to service of process signed by the issuer and a filing fee as determined under Section 61-1-18.4;

(b) after the initial offer of such federal covered security in this state, all documents that are part of an amendment to a federal registration statement filed with the U.S. Securities and Exchange Commission under the Securities Act of 1933, which shall be filed concurrently with the division;

(c) a report of the value of federal covered securities offered or sold in this state, together with a filing fee as determined under Section 61-1-18.4; and

(d) a notice filing under this section shall be effective for one year and shall be renewed annually in order to continue to offer or sell the federal covered securities for which the notice was filed.

(2) With respect to a security that is a covered security under Section 18(b)(4)(D) of the Securities Act of 1933, the division by rule or order may require the issuer to file a notice on SEC Form D and a consent to service of process signed by the issuer no later than 15 days after the first sale of such covered security in this state, together with a filing fee as determined under Section 61-1-18.4.

(3) The division by rule or order may require the filing of a document filed with the Securities and Exchange Commission under the Securities Act of 1933, with respect to a covered security under Securities Act of 1933, Section 18(b)(3) or (4), together with a filing fee as determined under Section 61-1-18.4.

(4) Upon approval by a majority of the commission, the director, by means of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, may issue a stop order suspending the offer and sale of a federal covered security, except a covered security under Section 18(b)(1) of the Securities Act of 1933, if the director finds that the order is in the public interest and there is a failure to comply with any condition established under this section.

(5) The division by rule or order may waive any or all of the provisions of this section.

Amended by Chapter 351, 2009 General Session

**61-1-16. False statements unlawful.**

It is unlawful for any person to make or cause to be made, in any document filed with the division or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

Amended by Chapter 284, 1983 General Session

**61-1-17. No finding by division on merits -- Contrary representation unlawful.**

(1) Neither the fact that an application for registration or a registration statement has been filed nor the fact that a person or security is effectively registered constitutes a finding by the division that any document filed under this chapter is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the division has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction.

(2) It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with Subsection (1).

Amended by Chapter 284, 1983 General Session

**61-1-18. Division of Securities established -- Director -- Investigators.**

(1) (a) There is established within the Department of Commerce a Division of Securities.

(b) The division is under the direction and control of a director. The executive director shall appoint the director with the governor's approval.

(c) Subject to Section 61-1-18.5, the division shall administer and enforce this chapter.

(d) The director shall hold office at the pleasure of the governor.

(2) The director, with the approval of the executive director, may employ the staff necessary to discharge the duties of the division or commission at salaries to be fixed by the director according to standards established by the Department of Human Resource Management.

(3) An investigator employed pursuant to Subsection (2) who meets the training requirements of Subsection 53-13-105(3) may be designated a special function officer, as defined in Section 53-13-105, by the director, but is not eligible for retirement benefits under the Public Safety Employee's Retirement System.

Amended by Chapter 351, 2009 General Session

**61-1-18.1. Technical experts and specialists -- Employment -- Contracts.**

The director may employ or contract with technical experts and specialists including but not limited to certified public accountants, appraisers, engineers, and tax accountants to conduct or participate in any examination, audit, investigation or proceeding.

Enacted by Chapter 284, 1983 General Session

**61-1-18.2. Budget -- Annual report.**

The director shall annually prepare and submit to the executive director:

(1) a budget for the expenses of the division and commission for the administration and enforcement of this chapter for the next fiscal year; and

(2) a report outlining the division's and commission's work for the preceding

fiscal year.

Amended by Chapter 351, 2009 General Session

**61-1-18.3. Information obtained by division or commission -- Use for personal benefit prohibited -- Disclosure.**

(1) It is unlawful for an employee of the division or a member of the commission to use for personal benefit any non-public information that is filed with or obtained by the division or commission.

(2) This chapter does not authorize the division, an employee of the division, the commission, or a member of the commission to disclose information described in Subsection (1), except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter.

(3) No provision of this chapter either creates or derogates from a privilege that exists at common law or otherwise when documentary or other evidence is sought under subpoena directed to:

- (a) the division;
- (b) the commission;
- (c) a member of the commission; or
- (d) an employee of the division.

Amended by Chapter 351, 2009 General Session

**61-1-18.4. Fees collected by division.**

The Division of Securities shall establish, charge, and collect fees pursuant to Section 63J-1-504, except when it can be demonstrated that the fee amount should be based on factors other than cost, for the following:

(1) the fair and reasonable cost of any examination, audit, or investigation authorized or required by this chapter or other state law;

(2) certificate of serving and mailing process served upon the division in any action or proceeding commenced or prosecuted in this state against any person who has appointed the division its agent as provided in Subsection 61-1-26(7); and

(3) copies and authentication of all papers, publications, data, and other records available to the public or issued under the division's authority.

Amended by Chapter 183, 2009 General Session

**61-1-18.5. Securities Commission -- Transition.**

(1) (a) There is created a Securities Commission.

(b) The division shall provide staffing to the commission.

(2) (a) The commission shall:

(i) formulate and make recommendations to the director regarding policy and budgetary matters;

(ii) submit recommendations regarding registration requirements;

(iii) formulate and make recommendations to the director regarding the establishment of reasonable fees;

(iv) act in an advisory capacity to the director with respect to the exercise of the director's duties, powers, and responsibilities;

(v) conduct an administrative hearing under this chapter that is not:

(A) delegated by the commission to an administrative law judge or the division relating to a violation of this chapter; or

(B) expressly delegated to the division under this chapter;

(vi) except as provided in Subsection (2)(b), and consistent with Section 61-1-20, impose a sanction as provided in this chapter;

(vii) review rules made by the division for purposes of concurrence in accordance with Section 61-1-24; and

(viii) perform other duties as this chapter provides.

(b) (i) The commission may delegate to the division the authority to impose a sanction under this chapter.

(ii) If under Subsection (2)(b)(i) the commission delegates to the division the authority to impose a sanction, a person who is subject to the sanction may petition the commission for review of the sanction.

(iii) A person who is sanctioned by the division in accordance with this Subsection (2)(b) may seek agency review by the executive director only after the commission reviews the division's action.

(3) (a) The governor shall appoint five members to the commission with the consent of the Senate as follows:

(i) two members from the securities brokerage community:

(A) who are not from the same broker-dealer or affiliate; and

(B) who have at least five years prior experience in securities matters;

(ii) one member from the securities section of the Utah State Bar:

(A) whose practice primarily involves:

(I) corporate securities; or

(II) representation of plaintiffs in securities cases;

(B) who does not routinely represent clients involved in:

(I) civil or administrative litigation with the division; or

(II) criminal cases brought under this chapter; and

(C) who has at least five years prior experience in securities matters;

(iii) one member who is an officer or director of a business entity not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934; and

(iv) one member from the public at large who has no active participation in the securities business.

(b) A member may not serve more than two consecutive terms.

(4) (a) Except as required by Subsection (4)(b) and subject to Subsection (4)(c), as terms of current members expire, the governor shall appoint a new member or reappointed member to a four-year term.

(b) Notwithstanding Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.

(c) For purposes of making an appointment to the commission, the governor:

- (i) shall as of May 12, 2009:
  - (A) appoint all five members of the commission; and
  - (B) stagger the terms of the five members of the commission to comply with Subsection (4)(b); and
- (ii) may not consider the commission an extension of the previous Securities Advisory Board.
- (d) When a vacancy occurs in the membership for any reason, the governor shall appoint a replacement member for the unexpired term.
- (e) A member shall serve until the member's respective successor is appointed and qualified.
- (f) The commission shall annually select one member to serve as chair of the commission.
- (5) (a) The commission shall meet:
  - (i) at least quarterly on a regular date to be fixed by the commission; and
  - (ii) at such other times at the call of:
    - (A) the director; or
    - (B) any two members of the commission.
- (b) A majority of the commission shall constitute a quorum for the transaction of business.
- (c) An action of the commission requires a vote of a majority of members present.
- (6) A member of the commission shall, by sworn and written statement filed with the Department of Commerce and the lieutenant governor, disclose any position of employment or ownership interest that the member has with respect to an entity or business subject to the jurisdiction of the division or commission. This statement shall be filed upon appointment and must be appropriately amended whenever significant changes occur in matters covered by the statement.
- (7) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (8) (a) A rule or form made by the division under this section that is in effect on May 11, 2009, is considered to have been concurred with by the commission as of May 12, 2009, until the commission acts on the rule or form.
- (b) For a civil or administrative action pending under this chapter as of May 12, 2009, brought under the authority of division under this chapter as in effect May 11, 2009, that may be brought only by the commission under this chapter as in effect on May 12, 2009:
  - (i) the action shall be considered brought by the commission; and
  - (ii) the commission may take any act authorized under this chapter regarding that action.

Amended by Chapter 319, 2011 General Session

**61-1-18.6. Procedures -- Adjudicative proceedings.**

The commission and division shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative proceeding under this chapter.

Amended by Chapter 351, 2009 General Session

**61-1-18.7. Funding of securities investor education, training, and enforcement.**

(1) (a) There is created an expendable special revenue fund known as the "Securities Investor Education, Training, and Enforcement Fund" to provide revenue for the purposes stated in this section.

(b) For purposes of this section, "fund" means the Securities Investor Education, Training, and Enforcement Fund.

(2) Money received by the state by reason of civil penalties ordered and administrative fines collected pursuant to this chapter shall be deposited in the fund, and is subject to the requirements of Title 51, Chapter 5, Funds Consolidation Act.

(3) A fine collected by the division after July 1, 1989, pursuant to a voluntary settlement or administrative order shall be deposited into the fund.

(4) (a) The fund shall earn interest.

(b) Interest earned on fund money shall be deposited into the fund.

(5) Notwithstanding Title 63J, Chapter 1, Budgetary Procedures Act, the director may use money in the fund, upon concurrence of the commission and the executive director of the Department of Commerce, in a manner consistent with the duties of the division and commission under this chapter and only for any or all of the following and the expense of providing them:

(a) education and training of Utah residents in matters concerning securities laws and investment decisions, by publications or presentations;

(b) education of registrants and licensees under this chapter, by:

(i) publication of this chapter and rules and policy statements and opinion letters issued under this chapter; and

(ii) sponsorship of seminars or meetings to educate registrants and licensees as to the requirements of this chapter;

(c) investigation and litigation; and

(d) to pay an award to a reporter as provided in Part 1, Securities Fraud Reporting Program Act.

(6) If the balance in the fund exceeds \$500,000 at the close of any fiscal year, the excess shall be transferred to the General Fund.

Amended by Chapter 400, 2013 General Session

**61-1-19. Investigations authorized.**

(1) (a) The division may make any public or private investigations within or without this state as the division considers necessary to determine whether a person has violated, is violating, or is about to violate this chapter or a rule or order issued under this chapter.

(b) To aid in the enforcement of this chapter or in the prescribing of rules and forms issued under this chapter, the division may require or permit a person to file a statement in writing, under oath or otherwise as to all the facts and circumstances concerning the matter to be investigated.

(c) The division may publish information concerning a violation of this chapter or the violation of a rule or order issued under this chapter.

(2) For the purpose of an investigation or proceeding under this chapter, the division, the commission, or an employee designated by the division may:

(a) administer an oath or affirmation;

(b) subpoena a witness and compel the attendance of the witness;

(c) take evidence; and

(d) require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records relevant or material to the investigation.

Amended by Chapter 351, 2009 General Session

#### **61-1-20. Enforcement.**

(1) Whenever it appears to the director that a person has engaged, is engaging, or is about to engage in an act or practice constituting a violation of this chapter or a rule or order under this chapter, in addition to specific powers granted in this chapter:

(a) the director may issue an order directing the person to appear before the commission and show cause why an order should not be issued directing the person to cease and desist from engaging in the act or practice, or doing an act in furtherance of the activity;

(b) the order to show cause shall state the reasons for the order and the date of the hearing;

(c) the director shall promptly serve a copy of the order to show cause upon a person named in the order;

(d) the commission shall hold a hearing on the order to show cause no sooner than 10 business days after the order is issued;

(e) after a hearing, the commission may issue an order to cease and desist from engaging in an act or practice constituting a violation of this chapter or a rule or order under this chapter;

(f) the commission may impose a fine;

(g) the commission may bar or suspend that person from associating with a licensed broker-dealer or investment adviser in this state; and

(h) the commission may impose a combination of sanctions in Subsections (1)(e) through (g).

(2) (a) The director may bring an action in the appropriate district court of this state or the appropriate court of another state to enjoin an act or practice and to enforce compliance with this chapter or a rule or order under this chapter.

(b) Upon a proper showing in an action brought under this section, the court may:

(i) issue a permanent or temporary, prohibitory or mandatory injunction;

(ii) issue a restraining order or writ of mandamus;

(iii) enter a declaratory judgment;



(iv) appoint a receiver or conservator for the defendant or the defendant's assets;  
(v) order disgorgement;  
(vi) order rescission;  
(vii) order restitution;  
(viii) impose a fine of not more than \$10,000 for each violation of the chapter;  
and

(ix) enter any other relief the court considers just.  
(c) The court may not require the division to post a bond in an action brought under this Subsection (2).

(3) An order issued under Subsection (1) shall be accompanied by written findings of fact and conclusions of law.

(4) When determining the severity of a sanction to be imposed under this section, the commission or court shall consider whether:

(a) the person against whom the sanction is to be imposed exercised undue influence; or

(b) the person against whom the sanction is imposed under this section knows or should know that an investor in the investment that is the grounds for the sanction is a vulnerable adult.

Amended by Chapter 319, 2011 General Session

**61-1-21. Penalties for violations.**

(1) A person is guilty of a third degree felony who willfully violates:

(a) a provision of this chapter except Sections 61-1-1 and 61-1-16;

(b) an order issued under this chapter; or

(c) Section 61-1-16 knowing the statement made is false or misleading in a material respect.

(2) Subject to the other provisions of this section, a person who willfully violates Section 61-1-1:

(a) is guilty of a third degree felony if, at the time the crime was committed, the property, money, or thing unlawfully obtained or sought to be obtained was worth less than \$10,000; or

(b) is guilty of a second degree felony if, at the time the crime was committed, the property, money, or thing unlawfully obtained or sought to be obtained was worth \$10,000 or more.

(3) A person who willfully violates Section 61-1-1 is guilty of a second degree felony if:

(a) at the time the crime was committed, the property, money, or thing unlawfully obtained or sought to be obtained was worth less than \$10,000; and

(b) in connection with that violation, the violator knowingly accepted any money representing:

(i) equity in a person's primary residence;

(ii) a withdrawal from an individual retirement account;

(iii) a withdrawal from a qualified retirement plan as defined in the Internal Revenue Code;

- (iv) an investment by a person over whom the violator exercises undue influence; or
- (v) an investment by a person that the violator knows is a vulnerable adult.
- (4) A person who willfully violates Section 61-1-1 is guilty of a second degree felony punishable by imprisonment for an indeterminate term of not less than three years or more than 15 years if:
  - (a) at the time the crime was committed, the property, money, or thing unlawfully obtained or sought to be obtained was worth \$10,000 or more; and
  - (b) in connection with that violation, the violator knowingly accepted any money representing:
    - (i) equity in a person's primary residence;
    - (ii) a withdrawal from an individual retirement account;
    - (iii) a withdrawal from a qualified retirement plan as defined in the Internal Revenue Code;
  - (iv) an investment by a person over whom the violator exercises undue influence; or
  - (v) an investment by a person that the violator knows is a vulnerable adult.
- (5) It is an affirmative defense under this section against a claim that the person violated an order issued under this chapter for the person to prove that the person had no knowledge of the order.
- (6) In addition to any other penalty for a criminal violation of this chapter, the sentencing judge may impose a penalty or remedy provided for in Subsection 61-1-20(2)(b).

Amended by Chapter 319, 2011 General Session

**61-1-21.1. Limitation of prosecutions.**

- (1) No indictment or information may be returned or civil complaint filed under this chapter more than five years after the alleged violation.
- (2) As to causes of action arising from violations of this chapter, the limitation of prosecutions provided in this section supersedes the limitation of actions provided in Section 76-1-302 and Title 78B, Chapter 2, Statutes of Limitations.

Amended by Chapter 3, 2008 General Session

**61-1-21.5. Legal counsel -- Prosecutions.**

- (1) The attorney general shall advise and represent the division, the commission, and the staff of the division in all civil matters, administrative or judicial, requiring legal counsel or services in:
  - (a) the exercise or defense of the division's or commission's power; or
  - (b) the performance of the division's or commission's duties.
- (2) With the concurrence of the attorney general, the staff of the division may represent the division in hearings conducted during the course of adjudicative proceedings of the commission or the division.
- (3) (a) In the prosecution of all criminal actions under this chapter, the attorney general, county attorney, or district attorney of the appropriate jurisdiction, shall provide

all legal services for the division, the commission, and the staff of the division.

(b) The division or commission may refer evidence that is available concerning a violation of this chapter for criminal prosecution to:

- (i) the attorney general; or
- (ii) the appropriate county attorney, district attorney, or United States Attorney's Office.

(4) The attorney general, a county attorney, or a district attorney of the appropriate jurisdiction may institute a criminal proceeding under this chapter, with or without referral from the division.

Amended by Chapter 351, 2009 General Session

**61-1-22. Sales and purchases in violation -- Remedies -- Limitation of actions.**

- (1) (a) This Subsection (1) applies to a person who:
- (i) offers or sells a security in violation of:
    - (A) Subsection 61-1-3(1);
    - (B) Section 61-1-7;
    - (C) Subsection 61-1-17(2);
    - (D) a rule or order under Section 61-1-15, which requires the affirmative approval of sales literature before it is used; or
    - (E) a condition imposed under Subsection 61-1-10(4) or 61-1-11(7); or
  - (ii) offers, sells, or purchases a security in violation of Subsection 61-1-1(2).
- (b) A person described in Subsection (1)(a) is liable to a person selling the security to or buying the security from the person described in Subsection (1)(a). The person to whom the person described in Subsection (1)(a) is liable may sue either at law or in equity to recover the consideration paid for the security, together with interest at 12% per year from the date of payment, costs, and reasonable attorney fees, less the amount of income received on the security, upon the tender of the security or for damages if the person no longer owns the security.
- (c) Damages are an amount calculated as follows:
- (i) subtract from the amount that would be recoverable upon a tender under Subsection (7)(b) the value of the security when the buyer disposed of the security; and
  - (ii) add to the amount calculated under Subsection (1)(c)(i) interest at:
    - (A) 12% per year:
      - (I) beginning the day on which the security is purchased by the buyer; and
      - (II) ending on the date of disposition; and
    - (B) after the period described in Subsection (1)(c)(ii)(A), 12% per year on the amount lost at disposition.
- (2) The court in a suit brought under Subsection (1) may award an amount equal to three times the consideration paid for the security, together with interest, costs, and attorney fees, less any amounts, all as specified in Subsection (1) upon a showing that:
- (a) the violation was reckless or intentional; or
  - (b) the violation was of Subsection 61-1-1(2), was negligent, and it is demonstrated by clear and convincing evidence that the violation involved an investment by a person over whom the violator exercised undue influence.

(3) A person who offers or sells a security in violation of Subsection 61-1-1(2) is not liable under Subsection (1)(a) if the purchaser knew of the untruth or omission, or the seller did not know and in the exercise of reasonable care could not have known of the untrue statement or misleading omission.

(4) (a) Every person who directly or indirectly controls a seller or buyer liable under Subsection (1), every partner, officer, or director of such a seller or buyer, every person occupying a similar status or performing similar functions, every employee of such a seller or buyer who materially aids in the sale or purchase, and every broker-dealer or agent who materially aids in the sale or purchase are also liable jointly and severally with and to the same extent as the seller or purchaser, unless the nonseller or nonpurchaser who is so liable sustains the burden of proof that the nonseller or nonpurchaser did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

(b) There is contribution as in cases of contract among the several persons so liable.

(5) A tender specified in this section may be made at any time before entry of judgment.

(6) A cause of action under this section survives the death of a person who might have been a plaintiff or defendant.

(7) (a) An action may not be maintained to enforce liability under this section unless brought before the earlier of:

(i) the expiration of five years after the act or transaction constituting the violation; or

(ii) the expiration of two years after the discovery by the plaintiff of the facts constituting the violation.

(b) A person may not sue under this section if:

(i) the buyer or seller received a written offer, before suit and at a time when the buyer or seller owned the security, to refund the consideration paid together with interest at 12% per year from the date of payment, less the amount of any income received on the security, and the buyer or seller failed to accept the offer within 30 days of its receipt; or

(ii) the buyer or seller received such an offer before suit and at a time when the buyer or seller did not own the security, unless the buyer or seller rejected the offer in writing within 30 days of its receipt.

(8) A person who has made or engaged in the performance of any contract in violation of this chapter or any rule or order issued under this chapter, or who has acquired a purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may not base a suit on the contract.

(9) A condition, stipulation, or provision binding a person acquiring a security to waive compliance with this chapter or a rule or order issued under this chapter is void.

(10) (a) The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist at law or in equity.

(b) This chapter does not create a cause of action not specified in this section or Subsection 61-1-4(6).

Amended by Chapter 191, 2012 General Session

**61-1-23. Review of orders.**

A person aggrieved by a final order under this chapter determining all of the issues of an adjudicative proceeding may obtain review of the order by the executive director in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 351, 2009 General Session

**61-1-24. Rules, forms, and orders.**

(1) (a) Subject to Subsection (1)(c), the division may make, amend, or rescind a rule, form, or order when necessary to carry out this chapter.

(b) For the purpose of a rule or form, the division may:

(i) classify securities, persons, and matters within the jurisdiction of the commission or division; and

(ii) prescribe different requirements for different classes.

(c) The division shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except that the division may not make, amend, or rescind a rule or form under this chapter without the concurrence of the commission.

(d) In prescribing a rule or form, the division may cooperate with the securities administrators of the other states and the Securities and Exchange Commission to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(2) (a) The division may prescribe:

(i) the form and content of a financial statement required under this chapter;

(ii) the circumstances under which a consolidated financial statement shall be filed; and

(iii) whether or not a required financial statement shall be certified by an independent public accountant.

(b) A financial statement under this chapter shall be prepared in accordance with generally accepted accounting principles.

(3) A provision of this chapter that imposes liability does not apply to an act done or omitted in good faith in conformity with a rule, form, or order of the division or an order of the commission, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

Amended by Chapter 347, 2009 General Session

Amended by Chapter 351, 2009 General Session

**61-1-25. Record of registrations.**

(1) (a) A document is filed when it is received by the division.

(b) If the last day prescribed for the filing of a document is a Saturday, Sunday, or legal holiday, the document is considered timely filed if it is filed on the next succeeding day that is not a Saturday, Sunday, or legal holiday.

- (2) (a) The division shall keep a register of:
- (i) all applications for registration and registration statements that are or have ever been effective under this chapter; and
  - (ii) all denial, suspension, or revocation orders entered under this chapter.
- (b) The register shall be open for public inspection.
- (3) The information contained in or filed with a registration statement, application, or report may be made available to the public under the rules the division prescribes.
- (4) (a) The division shall furnish to a person a photostatic or other copy, certified under seal if requested, of an entry in the register or any document that is a matter of public record:
- (i) upon request; and
  - (ii) at a reasonable charge prescribed by the division.
- (b) In a proceeding or prosecution under this chapter, a copy certified under this Subsection (4) is prima facie evidence of the contents of the entry or document certified.
- (5) The division may issue an interpretative opinion requested by an interested person if the commission concurs in the interpretative opinion.

Amended by Chapter 317, 2011 General Session

**61-1-26. Scope of the act -- Service of process.**

- (1) Section 61-1-1, Subsection 61-1-3(1), Sections 61-1-7, 61-1-15.5, 61-1-17, and 61-1-22 apply to persons who sell or offer to sell when:
- (a) an offer to sell is made in this state; or
  - (b) an offer to buy is made and accepted in this state.
- (2) Section 61-1-1, Subsection 61-1-3(1), and Section 61-1-17 apply to persons who buy or offer to buy when:
- (a) an offer to buy is made in this state; or
  - (b) an offer to sell is made and accepted in this state.
- (3) For the purposes of this section, an offer to sell or to buy is made in this state whether or not either party is then present in this state, when the offer:
- (a) originates from this state; or
  - (b) is directed by the offeror to this state and received at the place to which it is directed, or at any post office in this state in the case of a mailed offer.
- (4) For the purposes of this section, an offer to sell or to buy is accepted in this state when acceptance:
- (a) is communicated to the offeror in this state; and
  - (b) has not previously been communicated to the offeror, orally or in writing, outside this state, and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed or at any post office in this state in the case of a mailed acceptance.
- (5) An offer to sell or to buy is not made in this state when:
- (a) the publisher circulates or there is circulated on his behalf in this state any

bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than 2/3 of its circulation outside this state during the past 12 months; or

(b) a radio or television program originating outside this state is received in this state.

(6) Section 61-1-2 and Subsection 61-1-3(3), as well as Section 61-1-17 so far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

(7) (a) Every application for registration under this chapter and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the division, in such form as it prescribes by rule, an irrevocable consent appointing the division or the director to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor, executor, or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent.

(b) A person who has filed such a consent in connection with a previous registration or notice filing need not file another.

(c) Service may be made by leaving a copy of the process in the office of the division, but it is not effective unless the plaintiff, who may be the division in a suit, action, or proceeding instituted by it, sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the division, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(8) (a) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder, and he has not filed a consent to service of process under Subsection (7) and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his appointment of the division or the director to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor executor or administrator which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on him personally.

(b) Service may be made by leaving a copy of the process in the office of the division, but it is not effective unless the plaintiff, who may be the division in a suit, action, or proceeding instituted by it, sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last-known address or takes other steps which are reasonably calculated to give actual notice, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(9) When process is served under this section, the court, or the director shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

Amended by Chapter 160, 1997 General Session

**61-1-27. Construction of chapter.**

This chapter may be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation and administration of this chapter with the related federal regulation.

Amended by Chapter 284, 1983 General Session

**61-1-28. Citation of chapter.**

This chapter may be cited as the Utah Uniform Securities Act.

Amended by Chapter 284, 1983 General Session

**61-1-29. Savings clause.**

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application.

Amended by Chapter 284, 1983 General Session

**61-1-101. Title.**

This part is known as the "Securities Fraud Reporting Program Act."

Enacted by Chapter 318, 2011 General Session

**61-1-102. Definitions.**

As used in this part:

- (1) "Adverse action" means to:
  - (a) discharge, threaten, or directly or indirectly harass an employee; or
  - (b) otherwise discriminate against an employee in any manner that affects the employee's employment, including:
    - (i) compensation;
    - (ii) terms;
    - (iii) conditions;
    - (iv) location;
    - (v) rights;
    - (vi) immunities;
    - (vii) promotions; or
    - (viii) privileges.
- (2) "Covered judicial or administrative action" means a judicial or administrative action brought under this chapter that results in a monetary sanction exceeding \$50,000.
- (3) "Employee" means an individual who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied.
- (4) "Fund" means the Securities Investor Education, Training, and Enforcement



Fund created in Section 61-1-18.7.

- (5) "Original information" means information that is:
  - (a) derived from the independent knowledge or analysis of an individual;
  - (b) not known to the division or commission from a source other than the individual; and
  - (c) unless the individual is the source of the information, not exclusively derived from:
    - (i) an allegation made in a judicial or administrative hearing;
    - (ii) a government report, hearing, audit, or investigation; or
    - (iii) the media.
- (6) "Monetary sanction" means money required to be paid under this chapter as the result of a judicial or administrative action, including a penalty or disgorgement.
- (7) "Reporter" means an individual who provides original information relating to a violation in accordance with Section 61-1-103.

Enacted by Chapter 318, 2011 General Session

**61-1-103. Procedure for disclosure.**

- (1) To be a reporter for purposes of this part, the individual shall:
  - (a) provide original information to the division or commission;
  - (b) reasonably believe that the act that is disclosed by the original information is a violation of this chapter; and
  - (c) provide the original information to the division or commission:
    - (i) in writing; and
    - (ii) in accordance with the procedures established by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2) (a) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, and except as provided in Subsection (2)(b), the division, commission, or an employee of the division may not disclose information that could reasonably be expected to reveal the identity of a reporter.
- (b) This Subsection (2) is not intended to limit, and may not be construed to limit, the ability of the attorney general or division to present evidence to a grand jury or to share evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

Enacted by Chapter 318, 2011 General Session

**61-1-104. Reporter protected from adverse action -- Exceptions.**

- (1) An employer may not take adverse action against an employee who is a reporter because of a lawful act of the employee, or a person authorized to act on behalf of the employee, to:
  - (a) provide original information to the division or commission in accordance with Section 61-1-103;
  - (b) initiate, testify in, or assist in any investigation, judicial action, or administrative action based on or related to original information provided to the division or commission;

- (c) disclose information required or protected under:
  - (i) Sarbanes-Oxley Act of 2002, 15 U.S.C. Sec. 7201 et seq.;
  - (ii) Securities Exchange Act of 1934, 15 U.S.C. Sec. 78a et seq.;
  - (iii) 18 U.S.C. Sec. 1513(e);
  - (iv) a regulation issued by the Securities Exchange Commission; or
  - (v) this chapter or a rule made under this chapter.
- (2) Notwithstanding Subsection (1), an employee is not protected under this section if:
  - (a) the employee knowingly or recklessly makes a false, fictitious, or fraudulent statement or misrepresentation;
  - (b) the employee uses a false writing or document knowing that, or with reckless disregard as to whether, the writing or document contains false, fictitious, or fraudulent information;
  - (c) the employee knows that, or has a reckless disregard as to whether, the disclosure is of original information that is false or frivolous; or
  - (d) the employee is protected from adverse action as described in Section 21F of the Securities Exchange Act, 15 U.S.C. Sec. 78u-6, and regulations issued under that section.

Amended by Chapter 366, 2012 General Session

**61-1-105. Remedies for employee bringing action.**

- (1) As used in this section, "actual damages" means damages for injury or loss caused by a violation of Section 61-1-104.
- (2) (a) An employee who alleges a violation of Section 61-1-104 may bring a civil action for injunctive relief, actual damages, or both.
  - (b) An employee may not bring a civil action under this section more than:
    - (i) four years after the day on which the violation of Section 61-1-104 occurs; or
    - (ii) two years after the date when facts material to the right of action are known or reasonably should be known by the employee alleging a violation of Section 61-1-104.
- (3) An employee may bring an action under this section in the district court for the county where:
  - (a) the alleged violation occurs;
  - (b) the employee resides; or
  - (c) the person against whom the civil complaint is filed resides or has a principal place of business.
- (4) To prevail in an action brought under this section, an employee shall establish, by a preponderance of the evidence, that the employee has suffered an adverse action because the employee, or a person acting on the employee's behalf, engaged or intended to engage in an activity protected under Section 61-1-104.
- (5) A court may award as relief for an employee prevailing in an action brought under this section:
  - (a) reinstatement with the same fringe benefits and seniority status that the individual would have had, but for the adverse action;
  - (b) two times the amount of back pay otherwise owed to the individual, with

interest;

(c) compensation for litigation costs, expert witness fees, and reasonable attorney fees;

(d) actual damages; or

(e) any combination of the remedies listed in this Subsection (5).

(6) (a) An employer may file a counter claim against an employee who files a civil action under this section seeking attorney fees and costs incurred by the employer related to the action filed by the employee and the counter claim.

(b) The court may award an employer who files a counter claim under this Subsection (6) attorney fees and costs if the court finds that:

(i) there is no reasonable basis for the civil action filed by the employee; or

(ii) the employee is not protected under Section 61-1-104 because:

(A) the employee engaged in an act described in Subsections 61-1-104(2)(a) through (c); or

(B) Subsection 61-1-104(2)(d) applies.

Enacted by Chapter 318, 2011 General Session

**61-1-106. Award for reporter.**

(1) Subject to Section 61-1-108 and the other provisions of this section, the commission may award an award to one or more reporters who voluntarily provide original information to the commission or division that leads to the successful enforcement of a covered judicial or administrative action.

(2) The division shall pay an award under this section from the fund.

(3) (a) Subject to the other provisions of this section, the commission may determine the amount of award paid under this section, except that in determining the amount the commission shall consider:

(i) the significance of the original information provided by the reporter to the success of the covered judicial or administrative action;

(ii) the degree of assistance provided by the reporter in relation to the covered judicial or administrative action;

(iii) any costs of legal representation for the reporter in relation to the covered judicial or administrative action;

(iv) the programmatic interest of the commission in deterring a violation of this chapter by making an award to a reporter who provides original information that leads to the successful enforcement of this chapter;

(v) whether, and the extent to which, the reporter or a legal representative of the reporter participated in internal compliance systems, including:

(A) whether, and the extent to which, the reporter reported the possible securities violation through internal reporting, legal, or compliance procedures before, or at the same time as reporting the securities violation to the division or commission; and

(B) whether, and the extent to which, the reporter assisted an internal investigation or inquiry concerning the reported securities violation; and

(vi) any other relevant factor that the division may establish by rule.

(b) The aggregate amount of awards that the commission may award for a

specific covered judicial or administrative action may not exceed:

- (i) the balance in the fund as of the date the awards are determined; or
  - (ii) 30%, in total, of what is collected of the monetary sanction imposed in the judicial or administrative action.
- (4) The commission may not award a reporter under this section if the reporter:
- (a) is convicted of a criminal violation related to the covered judicial or administrative action for which the reporter otherwise could receive an award;
  - (b) gains the original information through the performance of an audit of financial statements required under securities laws and for whom providing the original information would violate 15 U.S.C. Sec. 78j-1;
  - (c) fails to provide the original information to the commission or division in accordance with Section 61-1-103;
  - (d) knowingly or recklessly makes a false, fictitious, or fraudulent statement or misrepresentation;
  - (e) uses a false writing or document knowing that, or with reckless disregard as to whether, the writing or document contains false, fictitious, or fraudulent information;
  - (f) knows that, or has a reckless disregard as to whether, the disclosure is of original information that is false or frivolous;
  - (g) has a legal duty to report the original information to the commission or division; or
  - (h) qualifies for an award as described in Section 21F of the Securities Exchange Act, 15 U.S.C. Sec. 78u-6, and regulations issued under that section.

Amended by Chapter 366, 2012 General Session

Amended by Chapter 369, 2012 General Session

**61-1-107. Procedures related to an award to a reporter.**

(1) If the commission determines to make an award under Section 61-1-106, the commission shall make the award in accordance with a procedure adopted by the division by rule.

(2) A contract with the commission is not necessary for a reporter to receive an award under Section 61-1-106, unless otherwise required by the division by rule made under Subsection (1).

(3) A reporter who makes a claim for an award under this section may hire an attorney to represent the reporter.

(4) (a) The commission has discretion when making a determination under this section or Section 61-1-106, including whether, to whom, or in what amount to make an award.

(b) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, a person aggrieved by a determination of the commission, except for a determination of the amount of the award, may appeal the determination in the same manner as a formal adjudicative proceeding.

(5) This part may not be construed to require the division or commission to compensate a reporter for participation in an investigation, hearing, or inquiry held under this chapter.

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking

Act, the division shall make the rules described in Subsection (1) and Subsection 61-1-106(3) consistent with this part.

Enacted by Chapter 318, 2011 General Session

**61-1-108. Notice of contents of this part -- May not waive -- Nonexclusive.**

(1) An employer who is licensed under this chapter shall post a notice and use other appropriate means to inform an employee of rights, protections, and obligations under this part.

(2) An individual may not waive a right or protection provided by this part by agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

(3) This part may not be considered to diminish the rights, privileges, or remedies of a reporter under federal or state law, or under any collective bargaining agreement.

Enacted by Chapter 318, 2011 General Session

**61-2-101. Title.**

This chapter is known as the "Division of Real Estate."

Enacted by Chapter 379, 2010 General Session

**61-2-102. Definitions.**

As used in this chapter:

(1) "Department" means the Department of Commerce.

(2) "Director" means the director of the division appointed under Section 61-2-201.

(3) "Division" means the Division of Real Estate created in Section 61-2-201.

(4) "Executive director" means the executive director of the department appointed under Section 13-1-3.

Enacted by Chapter 379, 2010 General Session

**61-2-201. Division of Real Estate created -- Director appointed -- Personnel.**

(1) There is created within the department a Division of Real Estate. The division is responsible for the administration and enforcement of:

(a) this chapter;

(b) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;

(c) Title 57, Chapter 19, Timeshare and Camp Resort Act;

(d) Title 57, Chapter 23, Real Estate Cooperative Marketing Act;

(e) Chapter 2c, Utah Residential Mortgage Practices and Licensing Act;

(f) Chapter 2e, Appraisal Management Company Registration and Regulation Act;

(g) Chapter 2f, Real Estate Licensing and Practices Act; and

- (h) Chapter 2g, Real Estate Appraiser Licensing and Certification Act.
- (2) The division is under the direction and control of a director appointed by the executive director of the department with the approval of the governor. The director holds the office of director at the pleasure of the governor.
- (3) The director, with the approval of the executive director, may employ personnel necessary to discharge the duties of the division at salaries to be fixed by the director according to standards established by the Department of Administrative Services.

Amended by Chapter 289, 2011 General Session

**61-2-202. Powers and duties of the director or division.**

- (1) On or before October 1 of each year, in conjunction with the department, the director shall report to the governor and the Legislature concerning the division's work for the fiscal year immediately preceding the report.
- (2) In conjunction with the executive director, the director shall prepare and submit to the governor and the Legislature a budget for the fiscal year that follows the convening of the Legislature.

Enacted by Chapter 379, 2010 General Session

**61-2-203. Adjudicative proceedings.**

The division shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative proceeding under a chapter the division administers.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2-204. Utah Housing Opportunity Restricted Account.**

- (1) For purposes of this section, "account" means the Utah Housing Opportunity Restricted Account created by this section.
- (2) There is created in the General Fund a restricted account known as the "Utah Housing Opportunity Restricted Account."
- (3) The account shall be funded by:
  - (a) contributions deposited into the account in accordance with Section 41-1a-422;
  - (b) private contributions; and
  - (c) donations or grants from public or private entities.
- (4) (a) The state treasurer shall invest money in the account according to Title 51, Chapter 7, State Money Management Act.
  - (b) The Division of Finance shall deposit interest or other earnings derived from investment of account money into the General Fund.
- (5) The Legislature shall appropriate money in the account to the division.
- (6) The division shall distribute the money in the account to one or more charitable organizations that:
  - (a) are tax exempt under Section 501(c)(3), Internal Revenue Code; and
  - (b) have as a primary part of their mission to provide support to organizations

that create affordable housing for those in severe need.

(7) The division may consider a proposal only if it is:

(a) proposed by an organization described in Subsection (6); and  
(b) designed to provide support to organizations that create affordable housing for those in severe need.

(8) (a) An organization described in Subsection (6) may apply to the division to receive a distribution in accordance with Subsection (6).

(b) An organization that receives a distribution from the division in accordance with Subsection (6) shall expend the distribution only to provide support to organizations that create affordable housing for those in severe need.

(9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules providing procedures for an organization to apply to receive money under this section.

Amended by Chapter 303, 2011 General Session

**61-2c-101. Title.**

This chapter is known as the "Utah Residential Mortgage Practices and Licensing Act."

Amended by Chapter 372, 2009 General Session

**61-2c-102. Definitions.**

(1) As used in this chapter:

(a) "Affiliation" means that a mortgage loan originator is associated with a principal lending manager in accordance with Section 61-2c-209.

(b) "Applicant" means a person applying for a license under this chapter.

(c) "Approved examination provider" means a person approved by the nationwide database as an approved test provider.

(d) "Associate lending manager" means an individual who:

(i) qualifies under this chapter as a principal lending manager; and  
(ii) works by or on behalf of another principal lending manager in transacting the business of residential mortgage loans.

(e) "Branch lending manager" means an individual who is:

(i) licensed as a lending manager; and  
(ii) designated in the nationwide database by the individual's sponsoring entity as being responsible to work from a branch office and to supervise the business of residential mortgage loans that is conducted at the branch office.

(f) "Branch office" means a licensed entity's office:

(i) for the transaction of the business of residential mortgage loans regulated under this chapter;

(ii) other than the main office of the licensed entity; and

(iii) that operates under:

(A) the same business name as the licensed entity; or

(B) another trade name that is registered with the division under the entity license.

(g) "Business day" means a day other than:

- (i) a Saturday;
- (ii) a Sunday; or
- (iii) a federal or state holiday.

(h) (i) "Business of residential mortgage loans" means for compensation or in the expectation of compensation to:

- (A) engage in an act that makes an individual a mortgage loan originator;
- (B) make or originate a residential mortgage loan;
- (C) directly or indirectly solicit a residential mortgage loan for another;
- (D) unless excluded under Subsection (1)(h)(ii), render services related to the origination of a residential mortgage loan including:
  - (I) preparing a loan package;
  - (II) communicating with the borrower or lender;
  - (III) advising on a loan term;
  - (IV) acting as a loan processor without being employed by a licensed entity; or
  - (V) except as provided in Subsection (1)(h)(ii)(B) or (C), acting as a loan underwriter; or
- (E) engage in loan modification assistance.

(ii) "Business of residential mortgage loans" does not include:

- (A) if working as an employee under the direction of and subject to the supervision and instruction of a person licensed under this chapter, the performance of a clerical or support duty, including:
  - (I) the receipt, collection, or distribution of information common for the processing or underwriting of a loan in the mortgage industry other than taking an application;
  - (II) communicating with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan;
  - (III) word processing;
  - (IV) sending correspondence;
  - (V) assembling files; or
  - (VI) acting as a loan processor;
- (B) acting as a loan underwriter under the direction and control of an employer licensed under this chapter;
- (C) acting as a loan underwriter, as an employee of a depository institution, exclusively in the capacity of the depository institution's employee;
- (D) ownership of an entity that engages in the business of residential mortgage loans if the owner does not personally perform the acts listed in Subsection (1)(h)(i);
- (E) except if an individual will engage in an activity as a mortgage loan originator, acting in one or more of the following capacities:
  - (I) a loan wholesaler;
  - (II) an account executive for a loan wholesaler;
  - (III) a loan underwriter;
  - (IV) a loan closer; or
  - (V) funding a loan; or
- (F) if employed by a person who owns or services an existing residential mortgage loan, the direct negotiation with the borrower for the purpose of loan



modification.

(i) "Certified education provider" means a person who is certified under Section 61-2c-204.1 to provide one or more of the following:

(i) Utah-specific prelicensing education; or

(ii) Utah-specific continuing education.

(j) "Closed-end" means a loan:

(i) with a fixed amount borrowed; and

(ii) that does not permit additional borrowing secured by the same collateral.

(k) "Commission" means the Residential Mortgage Regulatory Commission created in Section 61-2c-104.

(l) "Compensation" means anything of economic value that is paid, loaned, granted, given, donated, or transferred to an individual or entity for or in consideration of:

(i) services;

(ii) personal or real property; or

(iii) another thing of value.

(m) "Concurrence" means that entities given a concurring role must jointly agree for the action to be taken.

(n) "Continuing education" means education taken by an individual licensed under this chapter in order to meet the education requirements imposed by Sections 61-2c-204.1 and 61-2c-205 to renew a license under this chapter.

(o) "Control," as used in Subsection 61-2c-105(2)(f), means the power to directly or indirectly:

(i) direct or exercise a controlling interest over:

(A) the management or policies of an entity; or

(B) the election of a majority of the directors, officers, managers, or managing partners of an entity;

(ii) vote 20% or more of a class of voting securities of an entity by an individual; or

(iii) vote more than 5% of a class of voting securities of an entity by another entity.

(p) (i) "Control person" means an individual identified by an entity registered with the nationwide database as being an individual directing the management or policies of the entity.

(ii) "Control person" may include one of the following who is identified as provided in Subsection (1)(p)(i):

(A) a manager;

(B) a managing partner;

(C) a director;

(D) an executive officer; or

(E) an individual who performs a function similar to an individual listed in this Subsection (1)(p)(ii).

(q) "Depository institution" is as defined in Section 7-1-103.

(r) "Director" means the director of the division.

(s) "Division" means the Division of Real Estate.

(t) "Dwelling" means a residential structure attached to real property that

contains one to four units including any of the following if used as a residence:

- (i) a condominium unit;
- (ii) a cooperative unit;
- (iii) a manufactured home; or
- (iv) a house.

(u) "Employee":

(i) means an individual:

(A) whose manner and means of work performance are subject to the right of control of, or are controlled by, another person; and

(B) whose compensation for federal income tax purposes is reported, or is required to be reported, on a W-2 form issued by the controlling person; and

(ii) does not include an independent contractor who performs duties other than at the direction of, and subject to the supervision and instruction of, another person.

(v) "Entity" means:

- (i) a corporation;
- (ii) a limited liability company;
- (iii) a partnership;
- (iv) a company;
- (v) an association;
- (vi) a joint venture;
- (vii) a business trust;
- (viii) a trust; or
- (ix) another organization.

(w) "Executive director" means the executive director of the Department of Commerce.

(x) "Federal licensing requirements" means Secure and Fair Enforcement for Mortgage Licensing, 12 U.S.C. Sec. 5101 et seq.

(y) "Foreclosure rescue" means, for compensation or with the expectation of receiving valuable consideration, to:

(i) engage, or offer to engage, in an act that:

(A) the person represents will assist a borrower in preventing a foreclosure; and

(B) relates to a transaction involving the transfer of title to residential real property; or

(ii) as an employee or agent of another person:

(A) solicit, or offer that the other person will engage in an act described in Subsection (1)(y)(i); or

(B) negotiate terms in relationship to an act described in Subsection (1)(y)(i).

(z) "Inactive status" means a dormant status into which an unexpired license is placed when the holder of the license is not currently engaging in the business of residential mortgage loans.

(aa) "Lending manager" means an individual licensed as a lending manager under Section 61-2c-206 to transact the business of residential mortgage loans.

(bb) "Licensee" means a person licensed with the division under this chapter.

(cc) "Licensing examination" means the examination required by Section 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

(dd) "Loan modification assistance" means, for compensation or with the

expectation of receiving valuable consideration, to:

(i) act, or offer to act, on behalf of a person to:

(A) obtain a loan term of a residential mortgage loan that is different from an existing loan term including:

(I) an increase or decrease in an interest rate;

(II) a change to the type of interest rate;

(III) an increase or decrease in the principal amount of the residential mortgage loan;

(IV) a change in the number of required period payments;

(V) an addition of collateral;

(VI) a change to, or addition of, a prepayment penalty;

(VII) an addition of a cosigner; or

(VIII) a change in persons obligated under the existing residential mortgage loan; or

(B) substitute a new residential mortgage loan for an existing residential mortgage loan; or

(ii) as an employee or agent of another person:

(A) solicit, or offer that the other person will engage in an act described in Subsection (1)(dd)(i); or

(B) negotiate terms in relationship to an act described in Subsection (1)(dd)(i).

(ee) (i) Except as provided in Subsection (1)(ee)(ii), "mortgage loan originator" means an individual who for compensation or in expectation of compensation:

(A) (I) takes a residential mortgage loan application; or

(II) offers or negotiates terms of a residential mortgage loan for the purpose of:

(Aa) a purchase;

(Bb) a refinance;

(Cc) a loan modification assistance; or

(Dd) a foreclosure rescue; and

(B) is licensed as a mortgage loan originator in accordance with this chapter.

(ii) "Mortgage loan originator" does not include a person who:

(A) is described in Subsection (1)(ee)(i), but who performs exclusively administrative or clerical tasks as described in Subsection (1)(h)(ii)(A);

(B) (I) is licensed under Chapter 2f, Real Estate Licensing and Practices Act;

(II) performs only real estate brokerage activities; and

(III) receives no compensation from:

(Aa) a lender;

(Bb) a lending manager; or

(Cc) an agent of a lender or lending manager; or

(C) is solely involved in extension of credit relating to a timeshare plan, as defined in 11 U.S.C. Sec. 101(53D).

(ff) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry, authorized under federal licensing requirements.

(gg) "Nontraditional mortgage product" means a mortgage product other than a 30-year fixed rate mortgage.

(hh) "Person" means an individual or entity.

(ii) "Prelicensing education" means education taken by an individual seeking to

be licensed under this chapter in order to meet the education requirements imposed by Section 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

(jj) "Principal lending manager" means an individual:

(i) licensed as a lending manager under Section 61-2c-206; and

(ii) identified in the nationwide database by the individual's sponsoring entity as the entity's principal lending manager.

(kk) "Record" means information that is:

(i) prepared, owned, received, or retained by a person; and

(ii) (A) inscribed on a tangible medium; or

(B) (I) stored in an electronic or other medium; and

(II) in a perceivable and reproducible form.

(ll) "Referral fee":

(i) means any fee, kickback, or thing of value tendered for a referral of business or a service incident to or part of a residential mortgage loan transaction; and

(ii) does not mean a payment made:

(A) by a licensed entity to an individual employed by the entity;

(B) under a contractual incentive program; and

(C) according to rules made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(mm) "Residential mortgage loan" means an extension of credit, if:

(i) the loan or extension of credit is secured by a:

(A) mortgage;

(B) deed of trust; or

(C) consensual security interest;

(ii) the mortgage, deed of trust, or consensual security interest described in Subsection (1)(mm)(i):

(A) is on a dwelling located in the state; and

(B) is created with the consent of the owner of the residential real property; and

(iii) solely for the purposes of defining "mortgage loan originator," the extension of credit is primarily for personal, family, or household use.

(nn) "Sponsorship" means an association in accordance with Section 61-2c-209 between an individual licensed under this chapter and an entity licensed under this chapter.

(oo) "State" means:

(i) a state, territory, or possession of the United States;

(ii) the District of Columbia; or

(iii) the Commonwealth of Puerto Rico.

(pp) "Unique identifier" is as defined in 12 U.S.C. Sec. 5102.

(qq) "Utah-specific" means an educational or examination requirement under this chapter that relates specifically to Utah.

(2) (a) If a term not defined in this section is defined by rule, the term shall have the meaning established by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) If a term not defined in this section is not defined by rule, the term shall have the meaning commonly accepted in the business community.

Amended by Chapter 350, 2014 General Session

**61-2c-103. Powers and duties of the division.**

- (1) The division shall administer this chapter.
- (2) In addition to a power or duty expressly provided in this chapter, the division may:
  - (a) receive and act on a complaint including:
    - (i) taking action designed to obtain voluntary compliance with this chapter; or
    - (ii) commencing an administrative or judicial proceeding on the division's own initiative;
  - (b) establish one or more programs for the education of consumers with respect to residential mortgage loans;
  - (c) (i) make one or more studies appropriate to effectuate the purposes and policies of this chapter; and
  - (ii) make the results of the studies described in Subsection (2)(c)(i) available to the public;
  - (d) visit and investigate a person licensed under this chapter, regardless of whether the person is located in Utah;
  - (e) employ one or more necessary hearing examiners, investigators, clerks, and other employees and agents; and
  - (f) establish fees under Section 63J-1-504 for:
    - (i) processing an application for licensing or certification; and
    - (ii) any other function required or permitted by this chapter.
- (3) The division shall make rules for the administration of this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including:
  - (a) licensure procedures for:
    - (i) a person required by this chapter to obtain a license with the division; and
    - (ii) the establishment of a branch office by an entity;
  - (b) proper handling of money received by a licensee;
  - (c) record-keeping requirements by a licensee, including proper disposal of a record;
  - (d) certification procedures for certifying an education provider; and
  - (e) standards of conduct for a licensee or certified education provider.
- (4) The division may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, require as a condition of maintaining a license or certification under this chapter that a person comply with a requirement of the nationwide database if:
  - (a) required for uniformity amongst states; and
  - (b) not inconsistent with this chapter.
- (5) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide a process under which an individual may challenge information contained in the nationwide database.
- (6) The division may enter into a relationship or contract with the nationwide database or another entity designated by the nationwide database to do the following related to a licensee or other person subject to this chapter:

- (a) collect or maintain a record; and
- (b) process a transaction fee or other fee.
- (7) The division shall regularly report the following to the nationwide database:
  - (a) a violation of this chapter;
  - (b) licensing or disciplinary action under this chapter; and
  - (c) other information relevant to this chapter.
- (8) If a person pays a fee or costs to the division with a negotiable instrument or any other method that is not honored for payment:
  - (a) the transaction for which the payment is submitted is voidable by the division;
  - (b) the division may reverse the transaction if payment of the applicable fee or costs is not received in full; and
  - (c) the person's license, certification, or registration is automatically suspended:
    - (i) beginning the day on which the payment is due; and
    - (ii) ending the day on which payment is made in full.

Amended by Chapter 43, 2013 General Session

**61-2c-104. Residential Mortgage Regulatory Commission.**

- (1) (a) There is created within the division the "Residential Mortgage Regulatory Commission" consisting of the following members appointed by the executive director with the approval of the governor:
  - (i) four members who:
    - (A) have at least three years of experience in transacting the business of residential mortgage loans; and
    - (B) are licensed under this chapter at the time of and during appointment; and
  - (ii) one member from the general public.
- (b) (i) The executive director with the approval of the governor may appoint an alternate member to the board.
- (ii) The alternate member shall:
  - (A) at the time of the appointment, have at least three years of experience in transacting the business of residential mortgage loans; and
  - (B) be licensed under this chapter at the time of and during appointment.
- (2) (a) Except as required by Subsection (2)(b), the executive director shall appoint a new member or reappointed member subject to appointment by the executive director to a four-year term ending June 30.
- (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.
- (c) If a vacancy occurs in the membership of the commission for any reason, the executive director shall appoint a replacement for the unexpired term.
- (d) A member shall remain on the commission until the member's successor is appointed and qualified.
- (3) Members of the commission shall annually select one member to serve as chair.

- (4) (a) The commission shall meet at least quarterly.
- (b) The director may call a meeting in addition to the meetings required by Subsection (4)(a):
  - (i) at the discretion of the director;
  - (ii) at the request of the chair of the commission; or
  - (iii) at the written request of three or more commission members.
- (5) (a) Three members of the commission constitute a quorum for the transaction of business.
- (b) If a quorum of members is unavailable for any meeting and an alternate member is appointed to the commission by the executive director with the approval of the governor, the alternate member shall serve as a regular member of the commission for that meeting if with the presence of the alternate member there is a quorum present at the meeting.
- (c) The action of a majority of a quorum present is an action of the commission.
- (6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (7) In addition to a duty or power expressly provided for elsewhere in this chapter, the commission shall:
  - (a) except as provided in Subsection 61-2c-202(3), concur in the licensure or denial of licensure of a person under this chapter in accordance with Part 2, Licensure;
  - (b) take disciplinary action with the concurrence of the director in accordance with Part 4, Enforcement; and
  - (c) advise the division concerning matters related to the administration and enforcement of this chapter.

Amended by Chapter 286, 2010 General Session

Amended by Chapter 379, 2010 General Session

**61-2c-105. Scope of chapter -- Exemptions.**

- (1) (a) Except as to an individual who will engage in an activity as a mortgage loan originator, this chapter applies to a closed-end residential mortgage loan secured by a first lien or equivalent security interest on a dwelling.
- (b) This chapter does not apply to a transaction covered by Title 70C, Utah Consumer Credit Code.
- (2) The following are exempt from this chapter:
  - (a) the federal government;
  - (b) a state;
  - (c) a political subdivision of a state;
  - (d) an agency of or entity created by a governmental entity described in Subsections (2)(a) through (c) including:
    - (i) the Utah Housing Corporation created in Title 35A, Chapter 8, Part 7, Utah Housing Corporation Act;

- (ii) the Federal National Mortgage Corporation;
- (iii) the Federal Home Loan Mortgage Corporation;
- (iv) the Federal Deposit Insurance Corporation;
- (v) the Resolution Trust Corporation;
- (vi) the Government National Mortgage Association;
- (vii) the Federal Housing Administration;
- (viii) the National Credit Union Administration;
- (ix) the Farmers Home Administration; and
- (x) the United States Department of Veterans Affairs;
- (e) a depository institution;
- (f) an entity that controls, is controlled by, or is under common control with a depository institution;
- (g) an employee or agent of an entity described in Subsections (2)(a) through (f):
  - (i) when that person acts on behalf of the entity described in Subsections (2)(a) through (f); and
  - (ii) including an employee of:
    - (A) a depository institution;
    - (B) a subsidiary of a depository institution that is:
      - (I) owned and controlled by the depository institution; and
      - (II) regulated by a federal banking agency, as defined in 12 U.S.C. Sec. 5102; or
    - (C) an institution regulated by the Farm Credit Administration;
  - (h) except as provided in Subsection (3), a person who:
    - (i) makes a loan:
      - (A) secured by an interest in real property;
      - (B) with the person's own money; and
      - (C) for the person's own investment; and
    - (ii) that does not engage in the business of making loans secured by an interest in real property;
  - (i) except as provided in Subsection (3), a person who receives a mortgage, deed of trust, or consensual security interest on real property if the individual or entity:
    - (i) is the seller of real property; and
    - (ii) receives the mortgage, deed of trust, or consensual security interest on real property as security for a separate money obligation;
  - (j) a person who receives a mortgage, deed of trust, or consensual security interest on real property if:
    - (i) the person receives the mortgage, deed of trust, or consensual security interest as security for an obligation payable on an installment or deferred payment basis;
    - (ii) the obligation described in Subsection (2)(j)(i) arises from a person providing materials or services used in the improvement of the real property that is the subject of the mortgage, deed of trust, or consensual security interest; and
    - (iii) the mortgage, deed of trust, or consensual security interest is created without the consent of the owner of the real property that is the subject of the mortgage, deed of trust, or consensual security interest;
  - (k) a nonprofit corporation that:



- (i) is exempt from paying federal income taxes;
  - (ii) is certified by the United States Small Business Administration as a small business investment company;
  - (iii) is organized to promote economic development in this state; and
  - (iv) has as its primary activity providing financing for business expansion;
  - (l) except as provided in Subsection (3), a court appointed fiduciary; or
  - (m) an attorney admitted to practice law in this state:
    - (i) if the attorney is not principally engaged in the business of negotiating residential mortgage loans when considering the attorney's ordinary practice as a whole for all the attorney's clients; and
    - (ii) when the attorney engages in loan modification assistance in the course of the attorney's practice as an attorney.
- (3) An individual who will engage in an activity as a mortgage loan originator is exempt from this chapter only if the individual is an employee or agent exempt under Subsection (2)(g).
- (4) (a) Notwithstanding Subsection (2)(m), an attorney exempt from this chapter may not engage in conduct described in Section 61-2c-301 when transacting business of residential mortgage loans.
- (b) If an attorney exempt from this chapter violates Subsection (4)(a), the attorney:
- (i) is not subject to enforcement by the division under Part 4, Enforcement; and
  - (ii) may be subject to disciplinary action generally applicable to an attorney admitted to practice law in this state.
- (c) If the division receives a complaint alleging an attorney exempt from this chapter is in violation of Subsection (4)(a) or that an attorney subject to this chapter has violated this chapter, the division shall forward the complaint to the Utah State Bar for disciplinary action.
- (5) (a) An individual who is exempt under Subsection (2) or (3) may voluntarily obtain a license under this chapter by complying with Part 2, Licensure.
- (b) An individual who voluntarily obtains a license pursuant to this Subsection (5) shall comply with all the provisions of this chapter.

Amended by Chapter 212, 2012 General Session

**61-2c-106. Addresses provided the division.**

- (1) (a) A person shall provide a physical location or street address when the person provides the nationwide database an address required by the division.
- (b) The following when provided to and maintained within the division under this chapter is public information:
- (i) a business address; or
  - (ii) a mailing address other than a home address, unless the person provides no other address.
- (2) A licensee is considered to have received a notification that is mailed to the last mailing address furnished to the nationwide database by:
- (a) the individual, if the licensee is an individual; or
  - (b) the lending manager who is designated within the nationwide database to act

as the principal lending manager for the entity, if the licensee is an entity.

Amended by Chapter 292, 2013 General Session

**61-2c-201. Licensure required of person engaged in the business of residential mortgage loans.**

(1) Unless exempt from this chapter under Section 61-2c-105, a person may not transact the business of residential mortgage loans without obtaining a license under this chapter.

(2) For purposes of this chapter, a person transacts business in this state if:

(a) (i) the person engages in an act that constitutes the business of residential mortgage loans; and

(ii) (A) the act described in Subsection (2)(a)(i) is directed to or received in this state; and

(B) the real property that is the subject of the act described in Subsection (2)(a)(i) is located in this state; or

(b) a representation is made by the person that the person transacts the business of residential mortgage loans in this state.

(3) An individual who has an ownership interest in an entity required to be licensed under this chapter is not required to obtain an individual license under this chapter unless the individual transacts the business of residential mortgage loans.

(4) Unless otherwise exempted under this chapter, licensure under this chapter is required of both:

(a) the individual who directly transacts the business of residential mortgage loans; and

(b) if the individual transacts business as an employee or agent of an entity or individual, the entity or individual for whom the employee or agent transacts the business of residential mortgage loans.

(5) (a) If an entity that is licensed to transact the business of residential mortgage loans transacts the business of residential mortgage loans under an assumed business name, the entity shall in accordance with rules made by the division:

(i) register the assumed name under this chapter; and

(ii) furnish proof that the assumed business name is filed with the Division of Corporations and Commercial Code pursuant to Title 42, Chapter 2, Conducting Business Under Assumed Name.

(b) The division may charge a fee established in accordance with Section 63J-1-504 for registering an assumed name pursuant to this Subsection (5).

Amended by Chapter 379, 2010 General Session

**61-2c-202. Licensure procedures.**

(1) To apply for licensure under this chapter an applicant shall in a manner provided by the division by rule:

(a) if the applicant is an entity, submit a licensure statement that:

(i) lists any name under which the entity will transact business in this state;

(ii) lists the address of the principal business location of the entity;

- (iii) identifies the principal lending manager of the entity;
- (iv) contains the signature of the principal lending manager;
- (v) identifies the one or more control persons for the entity;
- (vi) identifies the jurisdictions in which the entity is registered, licensed, or otherwise regulated in the business of residential mortgage loans;
- (vii) discloses any adverse administrative action taken by an administrative agency against:
  - (A) the entity; or
  - (B) any control person for the entity;
- (viii) discloses any history of criminal proceedings involving any control person for the entity; and
- (ix) includes any information required by the division by rule;
  - (b) if the applicant is an individual:
    - (i) submit a licensure statement that identifies the entity with which the applicant is sponsored;
    - (ii) authorize periodic criminal background checks through the nationwide database, at times provided by rule that the division makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, accessing:
      - (A) the Utah Bureau of Criminal Identification, if the nationwide database is able to obtain information from the Utah Bureau of Criminal Identification; and
      - (B) the Federal Bureau of Investigation;
    - (iii) submit evidence using a method approved by the division by rule of having successfully completed approved prelicensing education in accordance with Section 61-2c-204.1;
    - (iv) submit evidence using a method approved by the division by rule of having successfully passed any required licensing examination in accordance with Section 61-2c-204.1;
    - (v) submit evidence using a method approved by the division by rule of having successfully registered in the nationwide database, including paying a fee required by the nationwide database; and
    - (vi) authorize the division to obtain independent credit reports:
      - (A) through a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. Sec. 1681a; and
      - (B) at times provided by rule that the division makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
    - (c) pay to the division:
      - (i) an application fee established by the division in accordance with Section 63J-1-504; and
      - (ii) the reasonable expenses incurred by the division in processing the application for licensure.
- (2) (a) Upon receiving an application, the division, with the concurrence of the commission, shall determine whether the applicant:
  - (i) meets the qualifications for licensure; and
  - (ii) complies with this section.
- (b) If the division, with the concurrence of the commission, determines that an applicant meets the qualifications for licensure and complies with this section, the

division shall issue the applicant a license.

(c) If the division, with the concurrence of the commission, determines that the division requires more information to make a determination under Subsection (2)(a), the division may:

(i) hold the application pending further information about an applicant's criminal background or history related to adverse administrative action in any jurisdiction; or

(ii) issue a conditional license:

(A) pending the completion of a criminal background check; and

(B) subject to probation, suspension, or revocation if the criminal background check reveals that the applicant did not truthfully or accurately disclose on the licensing application a criminal history or other history related to adverse administrative action.

(3) (a) The commission may delegate to the division the authority to:

(i) review a class or category of application for an initial or renewed license;

(ii) determine whether an applicant meets the qualifications for licensure;

(iii) conduct a necessary hearing on an application; and

(iv) approve or deny a license application without concurrence by the commission.

(b) If the commission delegates to the division the authority to approve or deny an application without concurrence by the commission and the division denies an application for licensure, the applicant who is denied licensure may petition the commission for a de novo review of the application.

(c) An applicant who is denied licensure under Subsection (3)(b) may seek agency review by the executive director only after the commission reviews the division's denial of the applicant's application.

(d) Subject to Subsection (3)(c) and in accordance with Title 63G, Chapter 4, Administrative Procedures Act, an applicant who is denied licensure under this chapter may submit a request for agency review to the executive director within 30 days following the day on which the commission order denying the licensure is issued.

Amended by Chapter 292, 2013 General Session

### **61-2c-203. General qualifications for licensure.**

(1) To qualify for licensure under this chapter, a person shall demonstrate through procedures established by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) financial responsibility;

(b) good moral character, honesty, integrity, and truthfulness; and

(c) the competence to transact the business of residential mortgage loans, including general fitness such as to command the confidence of the community and to warrant a determination that the person will operate honestly, fairly, and efficiently within the purposes of this chapter.

(2) If an applicant is an entity, the applicant may not have a control person who fails to meet the requirements of Subsection (1) for an individual applicant.

(3) (a) The division shall determine whether an applicant with a criminal history qualifies for licensure.

(b) If the division, acting under Subsection (3)(a), denies or restricts a license or

places a license on probation, the applicant may petition the commission for de novo review of the application.

Amended by Chapter 166, 2012 General Session

**61-2c-204.1. Education providers -- Education requirements -- Examination requirements.**

(1) As used in this section:

(a) "Approved continuing education course" means a course of continuing education that is approved by the nationwide database.

(b) "Approved prelicensing education course" means a course of prelicensing education that is approved by the nationwide database.

(2) (a) A person may not provide Utah-specific prelicensing education or Utah-specific continuing education if that person is not certified by the division under this chapter.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules establishing:

(i) certification criteria and procedures to become a certified education provider; and

(ii) standards of conduct for a certified education provider.

(c) In accordance with the rules described in Subsection (2)(b), the division shall certify a person to provide the education described in Subsection (2)(a).

(d) (i) Upon request, the division shall make available to the public a list of the names and addresses of certified education providers either directly or through a third party.

(ii) A person who requests a list under this Subsection (2)(d) shall pay the costs incurred by the division to make the list available.

(e) In certifying a person as a certified education provider, the division by rule may:

(i) distinguish between an individual instructor and an entity that provides education; or

(ii) approve:

(A) Utah-specific prelicensing education; or

(B) Utah-specific continuing education courses.

(3) (a) The division may not:

(i) license an individual under this chapter as a mortgage loan originator who has not completed the prelicensing education required by this section:

(A) before taking the one or more licensing examinations required by Subsection (4);

(B) in the number of hours, not to exceed 90 hours, required by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(C) that includes the prelicensing education required by federal licensing regulations;

(ii) subject to Subsection (6), renew a license of an individual who has not completed the continuing education required by this section and Section 61-2c-205:

(A) in the number of hours required by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(B) that includes the continuing education required by federal licensing regulations; or

(iii) license an individual under this chapter as a lending manager who has not completed the prelicensing education required by Section 61-2c-206 before taking the licensing examination required by Section 61-2c-206.

(b) Subject to Subsection (3)(a) and with the concurrence of the division, the commission shall determine:

(i) except as provided in Subsection 61-2c-206(1)(b), the appropriate number of hours of prelicensing education required to obtain a license;

(ii) the subject matters of the prelicensing education required under this section and Section 61-2c-206, including online education or distance learning options;

(iii) the appropriate number of hours of continuing education required to renew a license; and

(iv) the subject matter of courses the division may accept for continuing education purposes.

(c) The commission may appoint a committee to make recommendations to the commission concerning approval of prelicensing education and continuing education courses, except that the commission shall appoint at least one member to the committee to represent each association that represents a significant number of individuals licensed under this chapter.

(d) The division may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the calculation of continuing education credits, except that the rules shall be consistent with 12 U.S.C. Sec. 5105.

(4) (a) The division may not license an individual under this chapter unless that individual first passes the one or more licensing examinations that:

(i) are adopted by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(ii) meet the minimum federal licensing requirements; and

(iii) are administered by an approved examination provider.

(b) The commission, with the concurrence of the division, shall determine the requirements for:

(i) a licensing examination that at least:

(A) meets the minimum federal licensing requirements; and

(B) tests knowledge of the:

(I) fundamentals of the English language;

(II) arithmetic;

(III) provisions of this chapter;

(IV) rules adopted under this chapter;

(V) basic residential mortgage principles and practices; and

(VI) any other aspect of Utah law the commission determines is appropriate; and

(ii) a licensing examination required under Section 61-2c-206 that:

(A) meets the requirements of Subsection (4)(b)(i); and

(B) tests knowledge of the:

(I) advanced residential mortgage principles and practices; and

(II) other aspects of Utah law the commission, with the concurrence of the division, determines appropriate.

(c) An individual who will engage in an activity as a mortgage loan originator, is not considered to have passed a licensing examination if that individual has not met the minimum competence requirements of 12 U.S.C. Sec. 5104(d)(3).

(5) When reasonably practicable, the commission and the division shall make the Utah-specific education requirements described in this section available electronically through one or more distance education methods approved by the commission and division.

(6) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission, with the concurrence of the division, shall make rules establishing procedures under which a licensee may be exempted from a Utah-specific continuing education requirement:

- (i) for a period not to exceed four years; and
- (ii) upon a finding of reasonable cause.

(b) An individual who engages in an activity as a mortgage loan originator may not under this Subsection (6) be exempted from the minimum continuing education required under federal licensing regulations for an individual who engages in an activity as a mortgage loan originator.

Amended by Chapter 166, 2012 General Session

**61-2c-205. Term of licensure -- Renewal -- Reporting of changes.**

(1) (a) A license issued under this chapter expires as follows:

(i) for the calendar year the license is issued:

(A) if the license is issued on or before October 31, the license expires on December 31 of the same calendar year; and

(B) if the license is issued on or after November 1, the license expires on December 31 of the following calendar year; and

(ii) after the December 31 on which a license expires under Subsection (1)(a)(i), a license expires annually on December 31.

(b) Notwithstanding Subsection (1)(a), the time period of a license may be extended or shortened by as much as one year to maintain or change a renewal cycle established by rule by the division.

(2) To renew a license, no later than the date the license expires, a licensee shall in a manner provided by the division by rule:

(a) file a renewal statement;

(b) furnish the information required by Subsection 61-2c-202(1);

(c) renew the licensee's registration with the nationwide database, including the payment of a fee required by the nationwide database;

(d) pay a fee to the division established by the division in accordance with Section 63J-1-504; and

(e) if the licensee is an individual, submit proof of having completed the continuing education required under Section 61-2c-204.1, according to the deadline the division establishes by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) (a) A licensee under this chapter shall notify the division in a manner provided by the division by rule within 10 days of the date on which there is a change in:

(i) a name under which the licensee transacts the business of residential mortgage loans in this state;

(ii) (A) if the licensee is an entity, the business location of the licensee; or

(B) if the licensee is an individual, the home and business addresses of the individual;

(iii) the principal lending manager of the entity;

(iv) the entity with which an individual licensee is licensed to conduct the business of residential mortgage loans; or

(v) any other information that is defined as material by rule made by the division.

(b) Failure to notify the division of a change described in Subsection (3)(a) is separate grounds for disciplinary action against a licensee.

(c) The division may charge a fee established in accordance with Section 63J-1-504 for processing a change that a licensee is required to report to the division under Subsection (3)(a).

(4) (a) A licensee shall notify the division by sending the division a signed statement within 10 business days of:

(i) a conviction of, or the entry of a plea in abeyance to:

(A) a felony; or

(B) a misdemeanor involving financial services or a financial services-related business, fraud, a false statement or omission, theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, or extortion;

(ii) the potential resolution of a felony or of a misdemeanor described in Subsection (4)(a)(i)(B) by a diversion agreement, or any other agreement under which a criminal charge is held in suspense for a period of time;

(iii) filing a personal bankruptcy or bankruptcy of a business that transacts the business of residential mortgage loans;

(iv) the suspension, revocation, surrender, cancellation, or denial of a professional license or professional registration of the licensee, whether the license or registration is issued by this state or another jurisdiction; or

(v) the entry of a cease and desist order or a temporary or permanent injunction:

(A) against the licensee by a court or licensing agency; and

(B) based on conduct or a practice involving the business of residential mortgage loans, or conduct involving fraud, misrepresentation, or deceit.

(b) The commission, with the concurrence of the division, shall enforce the reporting requirement under this Subsection (4) pursuant to Section 61-2c-402.

(5) (a) A license under this chapter expires if the licensee does not apply to renew the license on or before the expiration date of the license.

(b) A licensee whose license has expired may apply to reinstate the expired license, in a manner provided by the division by rule by:

(i) requesting reinstatement;

(ii) paying to the division a renewal fee and a late fee determined by the division under Section 63J-1-504; and

(iii) reinstating the licensee's registration with the nationwide database, including the payment of a fee required by the nationwide database.



Amended by Chapter 166, 2012 General Session

**61-2c-206. Lending manager licenses.**

(1) To qualify for licensure as a lending manager under this chapter, an individual shall:

- (a) meet the standards in Section 61-2c-203;
  - (b) successfully complete the following education:
    - (i) mortgage loan originator prelicensing education as required by federal licensing regulations; and
    - (ii) 40 hours of Utah-specific prelicensing education for a lending manager that is approved by the division under Section 61-2c-204.1;
  - (c) successfully complete the following examinations:
    - (i) the mortgage loan originator licensing examination as approved by the nationwide database; and
    - (ii) the lending manager licensing examination approved by the commission under Section 61-2c-204.1;
  - (d) submit proof, on a form approved by the division, of three years of full-time active experience as a mortgage loan originator licensed in any state in the five years preceding the day on which the application is submitted, or equivalent experience as approved by the commission pursuant to rule that the division makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
  - (e) submit an application in a manner established by the division by rule;
  - (f) establish sponsorship with an entity licensed under this chapter;
  - (g) submit to the criminal background check required by Subsection 61-2c-202(1)(b); and
  - (h) pay a fee determined by the division under Section 63J-1-504.
- (2) A lending manager may not:
- (a) engage in the business of residential mortgage loans on behalf of more than one entity at the same time;
  - (b) be sponsored by more than one entity at the same time; or
  - (c) act simultaneously as the principal lending manager and branch lending manager for the individual's sponsoring entity, if the entity operates from more than one office.
- (3) An individual who is a lending manager may:
- (a) transact the business of residential mortgage loans as a mortgage loan originator; and
  - (b) be designated within the nationwide database to act for the individual's sponsoring entity as the principal lending manager, an associate lending manager, or a branch lending manager.

Amended by Chapter 292, 2013 General Session

**61-2c-209. Sponsorship -- Affiliation.**

(1) (a) The division may not license an individual, and an individual licensed under this chapter may not conduct the business of residential mortgage loans unless:

(i) if licensed as a mortgage loan originator, the individual:  
(A) is sponsored by an entity licensed under this chapter; and  
(B) is affiliated with the sponsoring entity's principal lending manager; or  
(ii) if licensed as a lending manager, the individual is sponsored by an entity licensed under this chapter.

(b) The division may not license any entity and an entity licensed under this chapter may not conduct the business of residential mortgage loans unless the entity:

- (i) sponsors a principal lending manager;
- (ii) identifies at least one control person for the entity; and
- (iii) provides a list of the mortgage loan originators sponsored by the entity.

(2) (a) A mortgage loan originator's license automatically becomes inactive the day on which:

(i) the mortgage loan originator is not sponsored by an entity licensed under this chapter;

(ii) the license of the entity with which the mortgage loan originator is sponsored becomes inactive or terminates;

(iii) the mortgage loan originator is not affiliated with a principal lending manager; or

(iv) the license of the principal lending manager with whom the mortgage loan originator is affiliated becomes inactive or terminates.

(b) A lending manager's license automatically becomes inactive the day on which:

(i) the lending manager is not sponsored by an entity licensed under this chapter; or

(ii) the license of the entity with which the lending manager is sponsored becomes inactive or terminates.

(c) A entity licensed under this chapter automatically becomes inactive the day on which the entity's sponsorship with its principal lending manager terminates.

(3) (a) A person whose license is inactive may not transact the business of residential mortgage loans.

(b) To activate an inactive mortgage loan originator license, an individual shall:

(i) provide evidence that the individual:

(A) is sponsored by an entity that holds an active license under this chapter; and

(B) is affiliated with a principal lending manager who holds an active license

under this chapter; and

(ii) pay a fee to the division set in accordance with Section 63J-1-504.

(c) To activate an inactive lending manager license, an individual shall:

(i) provide evidence that the individual is sponsored by an entity that holds an active license under this chapter; and

(ii) pay a fee to the division set in accordance with Section 63J-1-504.

(d) To activate an inactive license held by an entity, an entity shall:

(i) provide evidence of the entity's sponsorship of a principal lending manager; and

(ii) pay a fee to the division set in accordance with Section 63J-1-504.

(4) (a) A mortgage loan originator shall conduct the business of residential mortgage loans only:

- (i) through the entity by which the individual is sponsored; and
- (ii) in the business name under which the sponsoring entity's principal lending manager is authorized by the division to do business.
- (b) An individual licensed under this chapter may not:
  - (i) engage in the business of residential mortgage loans on behalf of more than one entity at the same time;
  - (ii) be sponsored by more than one entity at the same time;
  - (iii) transact the business of residential mortgage loans for the following at the same time:
    - (A) an entity licensed under this chapter; and
    - (B) an entity that is exempt from licensure under Section 61-2c-105; or
  - (iv) if the individual is a mortgage loan originator, receive consideration for transacting the business of residential mortgage loans from any person except the principal lending manager of the mortgage loan originator's sponsoring entity.
- (c) This Subsection (4) does not restrict the number of:
  - (i) different lenders a person may use as a funding source for a residential mortgage loan; or
  - (ii) entities in which an individual may have an ownership interest, regardless of whether the entities are:
    - (A) licensed under this chapter; or
    - (B) exempt under Section 61-2c-105.
- (5) The division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may make rules that:
  - (a) define what constitutes:
    - (i) affiliation; or
    - (ii) sponsorship; and
  - (b) provide procedures by which:
    - (i) an individual who is licensed under this chapter may provide evidence of sponsorship by an entity that is licensed under this chapter;
    - (ii) a mortgage loan originator may provide evidence of affiliation with a principal lending manager; and
    - (iii) an entity licensed under this chapter may:
      - (A) provide evidence of its sponsorship of a principal lending manager;
      - (B) identify at least one control person for the entity; and
      - (C) provide a list of the one or more mortgage loan originators that the entity sponsors.

Amended by Chapter 166, 2012 General Session

**61-2c-210. Surrender of license.**

- (1) The division may, by written agreement, accept the voluntary surrender of a license issued under this chapter.
- (2) Tender and acceptance of a voluntary surrender of a license under Subsection (1):
  - (a) does not prevent the division from pursuing additional action, including disciplinary action, that relates to the surrendered license and is authorized by this

chapter or by rules made under this chapter; and

(b) terminates all rights and privileges associated with the license.

(3) A person may restore the rights and privileges described in Subsection (2)(b) only if the person reapplies for, and is granted, licensure in accordance with the requirements described in this chapter.

(4) Any documentation relating to the tender and acceptance of a voluntary surrender is a public record.

Enacted by Chapter 350, 2014 General Session

**61-2c-301. Prohibited conduct -- Violations of the chapter.**

(1) A person transacting the business of residential mortgage loans in this state may not:

(a) give or receive a referral fee, other compensation, or anything of value in exchange for a referral of residential mortgage loan business;

(b) charge a fee in connection with a residential mortgage loan transaction:

(i) that is excessive; or

(ii) without providing to the loan applicant a written statement signed by the loan applicant:

(A) stating whether or not the fee or deposit is refundable; and

(B) describing the conditions, if any, under which all or a portion of the fee or deposit will be refunded to the applicant;

(c) give or receive compensation or anything of value in exchange for a referral of settlement or loan closing services related to a residential mortgage loan transaction;

(d) do any of the following to induce a lender to extend credit as part of a residential mortgage loan transaction:

(i) make a false statement or representation;

(ii) cause false documents to be generated; or

(iii) knowingly permit false information to be submitted by any party;

(e) give or receive compensation or anything of value, or withhold or threaten to withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in reaching a value conclusion in a residential mortgage loan transaction, except that it is not a violation of this section for a licensee to withhold payment because of a bona fide dispute regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards of Professional Appraisal Practice;

(f) violate or not comply with:

(i) this chapter;

(ii) an order of the commission or division; or

(iii) a rule made by the division;

(g) fail to respond within the required time period to:

(i) a notice or complaint of the division; or

(ii) a request for information from the division;

(h) make false representations to the division, including in a licensure statement;

(i) for a residential mortgage loan transaction beginning on or after January 1, 2004, engage in the business of residential mortgage loans with respect to the transaction if the person also acts in any of the following capacities with respect to the

same residential mortgage loan transaction:

- (i) appraiser;
- (ii) escrow agent;
- (iii) real estate agent;
- (iv) general contractor; or
- (v) title insurance producer;
- (j) order a title insurance report or hold a title insurance policy unless the person provides to the title insurer a copy of a valid, current license under this chapter;
- (k) engage in unprofessional conduct as defined by rule;
- (l) engage in an act or omission in transacting the business of residential mortgage loans that constitutes dishonesty, fraud, or misrepresentation;
- (m) engage in false or misleading advertising;
- (n) (i) fail to account for money received in connection with a residential mortgage loan;
- (ii) use money for a different purpose from the purpose for which the money is received; or
- (iii) except as provided in Subsection (4), retain money paid for services if the services are not performed;
- (o) fail, within 90 calendar days of a request from a borrower who has paid for an appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;
- (p) engage in an act that is performed to:
  - (i) evade this chapter; or
  - (ii) assist another person to evade this chapter;
- (q) recommend or encourage default, delinquency, or continuation of an existing default or delinquency, by a mortgage applicant on an existing indebtedness before the closing of a residential mortgage loan that will refinance all or part of the indebtedness;
- (r) in the case of the lending manager of an entity or a branch office of an entity, fail to exercise reasonable supervision over the activities of:
  - (i) unlicensed staff; and
  - (ii) a mortgage loan originator who is affiliated with the lending manager;
- (s) pay or offer to pay an individual who does not hold a license under this chapter for work that requires the individual to hold a license under this chapter;
- (t) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
  - (i) provide a title insurance product or service without the approval required by Section 31A-2-405; or
  - (ii) knowingly provide false or misleading information in the statement required by Subsection 31A-2-405(2);
- (u) represent to the public that the person can or will perform any act of a mortgage loan originator if that person is not licensed under this chapter because the person is exempt under Subsection 61-2c-102(1)(h)(ii)(A), including through:
  - (i) advertising;
  - (ii) a business card;
  - (iii) stationery;
  - (iv) a brochure;
  - (v) a sign;

- (vi) a rate list; or
- (vii) other promotional item; or
- (v) (i) engage in an act of loan modification assistance without being licensed under this chapter;
- (ii) engage in an act of foreclosure rescue that requires licensure as a real estate agent or real estate broker under Chapter 2, Division of Real Estate, without being licensed under that chapter;
- (iii) engage in an act of loan modification assistance without entering into a written agreement specifying which one or more acts of loan modification assistance will be completed;
- (iv) request or require a person to pay a fee before obtaining:
  - (A) a written offer for a loan modification from the person's lender or servicer;
 and
  - (B) the person's written acceptance of the offer from the lender or servicer;
- (v) induce a person seeking a loan modification to hire the licensee to engage in an act of loan modification assistance by:
  - (A) suggesting to the person that the licensee has a special relationship with the person's lender or loan servicer; or
  - (B) falsely representing or advertising that the licensee is acting on behalf of:
    - (I) a government agency;
    - (II) the person's lender or loan servicer; or
    - (III) a nonprofit or charitable institution;
- (vi) recommend or participate in a loan modification that requires a person to:
  - (A) transfer title to real property to the licensee or to a third-party with whom the licensee has a business relationship or financial interest;
  - (B) make a mortgage payment to a person other than the person's loan servicer;
 or
  - (C) refrain from contacting the person's:
    - (I) lender;
    - (II) loan servicer;
    - (III) attorney;
    - (IV) credit counselor; or
    - (V) housing counselor; or
- (vii) for an agreement for loan modification assistance entered into on or after May 11, 2010, engage in an act of loan modification assistance without offering in writing to the person entering into the agreement for loan modification assistance a right to cancel the agreement within three business days after the day on which the person enters the agreement.

(2) Whether or not the crime is related to the business of residential mortgage loans, it is a violation of this chapter for a licensee or a person who is a certified education provider to do any of the following with respect to a criminal offense that involves moral turpitude:

- (a) be convicted;
- (b) plead guilty or nolo contendere;
- (c) enter a plea in abeyance; or
- (d) be subjected to a criminal disposition similar to the ones described in

Subsections (2)(a) through (c).

(3) A lending manager does not violate Subsection (1)(r) if:

(a) in contravention of the lending manager's written policies and instructions, an affiliated licensee of the lending manager violates:

(i) this chapter; or

(ii) rules made by the division under this chapter;

(b) the lending manager established and followed reasonable procedures to ensure that affiliated licensees receive adequate supervision;

(c) upon learning of a violation by an affiliated licensee, the lending manager attempted to prevent or mitigate the damage;

(d) the lending manager did not participate in or ratify the violation by an affiliated licensee; and

(e) the lending manager did not attempt to avoid learning of the violation.

(4) Notwithstanding Subsection (1)(n)(iii), a licensee may, upon compliance with Section 70D-2-305, charge a reasonable cancellation fee for work done originating a mortgage if the mortgage is not closed.

Amended by Chapter 166, 2012 General Session

**61-2c-302. Record requirements.**

(1) For the time period specified in Subsection (2), a licensee shall make or possess any record required for that licensee by a rule made by the division.

(2) A licensee shall maintain and safeguard in its possession a record described in Subsection (1) for four years from the last to occur of the following:

(a) the final entry on a residential mortgage loan is made by that licensee;

(b) if the residential mortgage loan is serviced by the licensee:

(i) the residential mortgage loan is paid in full; or

(ii) the licensee ceases to service the residential mortgage loan; or

(c) if the residential mortgage loan is not serviced by the licensee, the residential mortgage loan is closed.

(3) A licensee shall, upon the division's request:

(a) make available to the division for inspection and copying during normal business hours all records required to be maintained under this chapter; and

(b) produce all records described in Subsection (3)(a) that are related to an investigation being conducted by the division at the division office for inspection and copying by the division.

(4) A licensee who is an entity shall maintain and produce for inspection by the division a current list of all individuals whose licenses are sponsored by the entity.

(5) (a) A licensed entity shall:

(i) create, for each quarter of the fiscal year, a report of condition identifying all lending activities, including all loans closed by the entity's sponsored mortgage loan originators during the quarter;

(ii) provide each quarterly report of condition to the nationwide database; and

(iii) maintain each report of condition submitted to the nationwide database as required by 12 U.S.C. Sec. 5104(e) for at least four years from the day on which the licensee submits the report of condition to the nationwide database.

(b) Upon request by the division, a mortgage loan originator shall produce a report of condition for inspection by the division.

Amended by Chapter 166, 2012 General Session

**61-2c-401. Investigations.**

- (1) The division may investigate or cause to be investigated the actions of:
- (a) (i) a licensee;
  - (ii) a person required to be licensed under this chapter; or
  - (iii) the following with respect to an entity that is a licensee or an entity required to be licensed under this chapter:
    - (A) a manager;
    - (B) a managing partner;
    - (C) a director;
    - (D) an executive officer; or
    - (E) an individual who performs a function similar to an individual listed in this Subsection (1)(a)(iii);
  - (b) (i) an applicant for licensure or renewal of licensure under this chapter; or
  - (ii) the following with respect to an entity that has applied for a license or renewal of licensure under this chapter:
    - (A) a manager;
    - (B) a managing partner;
    - (C) a director;
    - (D) an executive officer; or
    - (E) an individual who performs a function similar to an individual listed in this Subsection (1)(b)(ii); or
  - (c) a person who transacts the business of residential mortgage loans within this state.
- (2) In conducting investigations, records inspections, and adjudicative proceedings, the division may:
- (a) administer an oath or affirmation;
  - (b) subpoena witnesses and evidence;
  - (c) take evidence;
  - (d) require the production of a record or information relevant to an investigation;
- and
- (e) serve a subpoena by certified mail.
- (3) A failure to respond to a request by the division in an investigation authorized under this chapter is considered as a separate violation of this chapter, including:
- (a) failing to respond to a subpoena;
  - (b) withholding evidence; or
  - (c) failing to produce a record.
- (4) The division may inspect and copy a record related to the business of residential mortgage loans by a licensee under this chapter, regardless of whether the record is maintained at a business location in Utah, in conducting:
- (a) investigations of complaints; or
  - (b) inspections of the record required to be maintained under:



- (i) this chapter; or
- (ii) rules adopted by the division under this chapter.

(5) (a) If a licensee maintains a record required by this chapter and the rules adopted by the division under this chapter outside Utah, the licensee is responsible for all reasonable costs, including reasonable travel costs, incurred by the division in inspecting the record.

(b) Upon receipt of notification from the division that a record maintained outside Utah is to be examined in connection with an investigation or an examination, the licensee shall deposit with the division a deposit of \$500 to cover the division's expenses in connection with the examination of the record.

(c) If the deposit described in Subsection (5)(b) is insufficient to meet the estimated costs and expenses of examination of the record, the licensee shall make an additional deposit to cover the estimated costs and expenses of the division.

(d) (i) A deposit under this Subsection (5) shall be deposited in the General Fund as a dedicated credit to be used by the division under Subsection (5)(a).

(ii) The division, with the concurrence of the executive director, may use a deposit as a dedicated credit for the records inspection costs under Subsection (5)(a).

(iii) A deposit under this Subsection (5) shall be refunded to the licensee to the extent it is not used, together with an itemized statement from the division of all amounts it has used.

(6) Failure to deposit with the division a deposit required to cover the costs of examination of a record that is maintained outside Utah shall result in automatic suspension of a license until the deposit is made.

(7) (a) If a person is found to have violated this chapter or a rule made under this chapter, the person shall pay the costs incurred by the division to copy a record required under this chapter, including the costs incurred to copy an electronic record in a universally readable format.

(b) If a person fails to pay the costs described in Subsection (7)(a) when due, the person's license or certification is automatically suspended:

- (i) beginning the day on which the payment of costs is due; and
- (ii) ending the day on which the costs are paid.

Amended by Chapter 379, 2010 General Session

Amended by Chapter 391, 2010 General Session

#### **61-2c-402. Disciplinary action.**

(1) Subject to the requirements of Section 61-2c-402.1, the commission, with the concurrence of the division, may impose a sanction described in Subsection (2) against a person if the person:

- (a) (i) is a licensee or person required to be licensed under this chapter; and
- (ii) violates this chapter; or

(b) (i) is a certified education provider or person required to be certified to provide prelicensing or continuing education under this chapter; and

- (ii) violates this chapter.

(2) The commission, with the concurrence of the director, may against a person described in Subsection (1):

- (a) impose an educational requirement;
  - (b) impose a civil penalty against the individual or entity in an amount not to exceed the greater of:
    - (i) \$5,000 for each violation; or
    - (ii) the amount equal to any gain or economic benefit derived from each violation;
  - (c) deny an application for an original license;
  - (d) do any of the following to a license under this chapter:
    - (i) suspend;
    - (ii) revoke;
    - (iii) place on probation;
    - (iv) deny renewal;
    - (v) deny reinstatement; or
    - (vi) in the case of a denial of a license or a suspension that extends to the expiration date of a license, set a waiting period for a person to apply for a license under this chapter;
  - (e) issue a cease and desist order;
  - (f) require the reimbursement of the division of costs incurred by the division related to the recovery, storage, or destruction of a record that the person disposes of in a manner that violates this chapter or a rule made under this chapter;
  - (g) modify a sanction described in Subsections (2)(a) through (f) if the commission finds that the person complies with court ordered restitution; or
  - (h) impose any combination of sanctions described in this Subsection (2).
- (3) (a) If the commission, with the concurrence of the division, issues an order that orders a fine or educational requirements as part of a disciplinary action against a person, including a stipulation and order, the commission shall state in the order the deadline by which the person shall comply with the fine or educational requirements.
- (b) If a person fails to comply with a stated deadline:
- (i) the person's license or certificate is automatically suspended:
    - (A) beginning the day specified in the order as the deadline for compliance; and
    - (B) ending the day on which the person complies in full with the order; and
  - (ii) if the person fails to pay a fine required by an order, the division may begin a collection process:
    - (A) established by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
    - (B) subject to Title 63A, Chapter 3, Part 5, Office of State Debt Collection.
- (4) (a) A person whose license was revoked under this chapter before May 11, 2010, may request that the revocation be converted to a suspension under this Subsection (4):
- (i) if the revocation was not as a result of a felony conviction involving fraud, misrepresentation, deceit, dishonesty, breach of trust, or money laundering; and
  - (ii) by filing a written request with the division.
- (b) Upon receipt of a request to convert a revocation under this Subsection (4), the commission, with the concurrence of the director, shall determine whether to convert the revocation.
- (c) The commission may delegate to the division the authority to make a

decision on whether to convert a revocation.

(d) If the division, acting under Subsection (4)(c), denies a request to convert a revocation, the person who requests the conversion may appeal the decision in a hearing conducted by the commission:

- (i) after the division denies the request to convert the revocation; and
- (ii) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(e) The commission may delegate to the division or an administrative law judge the authority to conduct a hearing described in Subsection (4)(d).

Amended by Chapter 369, 2012 General Session

**61-2c-402.1. Adjudicative proceedings -- Review.**

(1) (a) Before an action described in Section 61-2c-402 may be taken, the division shall:

- (i) give notice to the person against whom the action is brought; and
- (ii) commence an adjudicative proceeding.

(b) If after the adjudicative proceeding is commenced under Subsection (1)(a) the presiding officer determines that a person required to be licensed under this chapter has violated this chapter, the division may take an action described in Section 61-2c-402 by written order.

(2) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, a person against whom action is taken under this section may seek review by the executive director of the action.

(3) If a person prevails in a judicial appeal and the court finds that the state action was undertaken without substantial justification, the court may award reasonable litigation expenses to that individual or entity as provided under Title 78B, Chapter 8, Part 5, Small Business Equal Access to Justice Act.

(4) (a) An order issued under this section takes effect 30 days after the service of the order unless otherwise provided in the order.

(b) If an appeal of an order issued under this section is taken by a person, the division may stay enforcement of the order in accordance with Section 63G-4-405.

(5) If ordered by the court of competent jurisdiction, the division shall promptly take an action described in Section 61-2c-402 against a license granted under this chapter.

(6) (a) Except as provided in Subsection (6)(b), the division shall commence a disciplinary action under this chapter no later than the earlier of the following:

- (i) four years after the day on which the violation is reported to the division; or
- (ii) 10 years after the day on which the violation occurred.

(b) The division may commence a disciplinary action under this chapter after the time period described in Subsection (6)(a) expires if:

(i) (A) the disciplinary action is in response to a civil or criminal judgment or settlement; and

(B) the division initiates the disciplinary action no later than one year after the day on which the judgment is issued or the settlement is final; or

(ii) the division and the person subject to a disciplinary action enter into a written stipulation to extend the time period described in Subsection (6)(a).

Amended by Chapter 350, 2014 General Session

**61-2c-403. Cease and desist orders.**

(1) (a) The director may issue and serve by certified mail, or by personal service, on a person an order to cease and desist from an act if:

- (i) the director has reason to believe that the person has been engaged, is engaging in, or is about to engage in the act constituting a violation of this chapter; and
- (ii) it appears to the director that it would be in the public interest to stop the act.

(b) Within 10 days after service of the order, the party named in the order may request a hearing to be held in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(c) Pending a hearing requested under Subsection (1)(b), a cease and desist order shall remain in effect.

(2) (a) After the hearing described in Subsection (1), if the director finds that an act of the person violates this chapter, the director:

- (i) shall issue an order making the cease and desist order permanent; and
- (ii) may impose another disciplinary action under Section 61-2c-402.

(b) (i) The director may file suit in the name of the division to enjoin and restrain a person on whom an order is served under this section from violating this chapter if:

- (A) (I) the person does not request a hearing under Subsection (1); or
- (II) a permanent cease and desist order is issued against the person following a hearing or stipulation; and

- (B) (I) the person fails to cease the act; or
- (II) after discontinuing the act, the person again commences the act.

(ii) The suit described in Subsection (2)(b)(i) shall be filed in the district court in the county:

- (A) in which the act occurs;
- (B) where the individual resides; or
- (C) where the individual or entity carries on business.

(3) The cease and desist order issued under this section may not interfere with or prevent the prosecution of a remedy or action enforcement under this chapter.

(4) An individual who violates a cease and desist order issued under this section is guilty of a class A misdemeanor.

Amended by Chapter 372, 2009 General Session

**61-2c-404. Civil actions.**

(1) (a) A person who violates this chapter is liable for an additional penalty, as determined by the court, of at least the amount the person received in consequence of a violation of this chapter as:

- (i) commission;
- (ii) compensation; or
- (iii) profit.

(b) A person aggrieved by a violation of this chapter may:

- (i) bring an action for a penalty described in Subsection (1)(a); and

(ii) use a penalty obtained under Subsection (1)(a) for the person's own use and benefit.

(2) A person who is not licensed under this chapter at the time of an act or service that requires a license under this chapter may not bring an action in court for the recovery of a commission, fee, or compensation for that act or service.

(3) (a) A mortgage loan originator may not bring an action in the mortgage loan originator's own name for the recovery of a fee, commission, or compensation for transacting the business of residential mortgage loans unless the action is brought against the entity by which the mortgage loan originator is sponsored at the time of the act or service that is the subject of the action.

(b) An action by an entity for the recovery of a fee, commission, or other compensation shall be brought by:

(i) an entity; or

(ii) the principal lending manager of an entity on behalf of the entity.

(4) A principal lending manager who transacts the business of residential mortgage loans on the principal lending manager's own behalf may sue in the principal lending manager's own name for the recovery of a fee, commission, or compensation for transacting the business of residential mortgage loans.

Amended by Chapter 166, 2012 General Session

**61-2c-405. Penalty for violating this chapter -- Automatic revocation.**

(1) In addition to being subject to a disciplinary action by the commission, a person required to be licensed or certified under this chapter who violates this chapter:

(a) is guilty of a class A misdemeanor upon conviction of a first violation of this chapter; and

(b) is guilty of a third degree felony upon conviction of a second or subsequent violation of this chapter.

(2) A license or certification issued by the division to a person convicted of a violation of Section 76-6-1203 is automatically revoked.

Amended by Chapter 352, 2009 General Session

Amended by Chapter 372, 2009 General Session

**61-2c-501. Fund created.**

(1) There is created an expendable special revenue fund known as the "Residential Mortgage Loan Education, Research, and Recovery Fund."

(2) The interest earned on the fund shall be deposited into the fund.

(3) At the beginning of each fiscal year, the division shall make available \$100,000 in the fund to satisfy final judgments rendered against a person licensed under this chapter.

Amended by Chapter 400, 2013 General Session

**61-2c-501.5. Definitions.**

As used in this part:

- (1) "Civil judgment" means a judgment in a civil action that:
  - (a) is awarded in an action brought against a person licensed under this chapter on the basis of fraud, misrepresentation, or deceit in a residential mortgage loan transaction; and
  - (b) awards actual damages.
- (2) "Criminal restitution judgment" means a judgment that, in accordance with the Utah Code of Criminal Procedure, orders criminal restitution to a person and against a person licensed under this chapter for a criminal offense involving fraud, misrepresentation, or deceit in a residential mortgage loan transaction.
- (3) "Final judgment" means one of the following judgments upon termination of the proceedings related to the judgment, including appeals:
  - (a) a civil judgment; or
  - (b) a criminal restitution judgment.
- (4) "Fund" means the Residential Mortgage Loan Education, Research, and Recovery Fund created in Section 61-2c-501.

Amended by Chapter 289, 2011 General Session

**61-2c-502. Additional license fee.**

- (1) An individual who applies for or renews a license shall pay, in addition to any other fee required under this chapter, a reasonable annual fee:
  - (a) determined by the division with the concurrence of the commission; and
  - (b) not to exceed \$18.
- (2) (a) An entity that applies for or renews an entity license shall pay, in addition to any other fee required under this chapter, a reasonable annual fee:
  - (i) determined by the division with the concurrence of the commission; and
  - (ii) not to exceed \$25.
- (b) This Subsection (2) applies:
  - (i) notwithstanding that an entity is operating under an assumed name registered with the division as required by Subsection 61-2c-201(9); and
  - (ii) to each branch office of an entity that is licensed under this chapter.
- (3) Notwithstanding Section 13-1-2, the following shall be paid into the fund to be used as provided in this part:
  - (a) a fee provided in this section;
  - (b) a fee for certifying:
    - (i) a school as a certified education provider;
    - (ii) a prelicensing or continuing education course; or
    - (iii) a prelicensing or continuing education provider as an instructor; and
  - (c) a civil penalty imposed under this chapter.
- (4) If the balance in the fund that is available to satisfy a judgment against a licensee decreases to less than \$100,000, the division may make an additional assessment to a licensee to maintain the balance available at \$100,000 to satisfy judgments.

Amended by Chapter 379, 2010 General Session

**61-2c-503. Notice to division -- Judgment against mortgage licensee -- Fraud, misrepresentation, or deceit -- Verified petition for order directing payment from fund -- Limitations and procedure.**

- (1) A person may bring a claim against the fund if:
  - (a) the person obtains a final judgment;
  - (b) the person complies with the requirements under this part;
  - (c) the person is not complicit in the fraud, misrepresentation, or deceit that is the basis of the claim; and
  - (d) the final judgment that is the basis for the claim:
    - (i) has not been discharged in bankruptcy; and
    - (ii) when a bankruptcy proceeding is open or commenced during the pendency of the claim, the person obtains an order from the bankruptcy court declaring the final judgment and related debt to be nondischargeable.
- (2) (a) A person may not bring a claim against the fund for money owed under a civil judgment unless, within 10 business days of the day on which the person brings the civil action that results in the civil judgment, the person sends to the division a signed notification alleging fraud, misrepresentation, or deceit.
- (b) Within 30 calendar days of the day on which the division receives a notice under Subsection (1), the division may intervene in the action.
- (3) (a) After obtaining a final judgment, to file a claim against the fund, a person shall:
  - (i) file a verified petition in the court where the final judgment is entered seeking an order directing payment from the fund of an amount equal to the uncollected actual damages owed under the final judgment that are unpaid;
  - (ii) serve a copy of the verified petition described in Subsection (3)(a)(i) on the division; and
  - (iii) file a copy of the affidavit of service of the verified petition with the court.
- (b) A recovery from the fund may not include:
  - (i) punitive damages;
  - (ii) attorney fees;
  - (iii) interest; or
  - (iv) court costs.
- (c) Regardless of the number of claimants or number of loans involved in a transaction, the liability of the fund may not exceed:
  - (i) \$15,000 for a single transaction;
  - (ii) \$45,000 for an individual licensee; or
  - (iii) \$45,000 for an entity.
- (4) A court shall conduct a hearing on a petition filed under Subsection (3) as scheduled by the court.
- (5) Subject to Subsection (6), a court may order payment from the fund under this section only if the person who files the petition shows that the person:
  - (a) is not:
    - (i) in the case of a civil judgment, the spouse of the judgment debtor;
    - (ii) in the case of a criminal judgment, the spouse of the criminal defendant; or
    - (iii) a personal representative of an individual described in Subsection (5)(a)(i) or
  - (ii);

- (b) has complied with this chapter;
  - (c) is owed damages under a final judgment that:
    - (i) is issued by the court in the manner prescribed under this section; and
    - (ii) indicates the amount of the final judgment awarded;
  - (d) has proved the amount still owing on the final judgment on the day on which the petition is filed;
  - (e) (i) (A) has a writ of execution issued upon the final judgment; and  
(B) has received a return made by the officer executing the writ showing that no property subject to execution in satisfaction of the final judgment could be found; or  
(ii) if execution is levied against the property of the judgment debtor or criminal defendant:
    - (A) has not realized an amount sufficient to satisfy the final judgment; and
    - (B) is owed a balance on the final judgment after application of the amount realized;
  - (f) has made reasonable searches and inquiries to ascertain whether the judgment debtor or criminal defendant has any interest in property, real or personal, that may satisfy the final judgment; and
  - (g) has exercised reasonable diligence to secure payment of the final judgment from the assets of the judgment debtor or criminal defendant.
- (6) If a person satisfies the court that it is not practicable for the person to comply with one or more of the requirements in Subsections (5)(e) through (g), the court may waive those requirements.

Amended by Chapter 379, 2010 General Session

**61-2c-504. Authority to act on receipt of petition.**

- (1) Upon receipt of a petition meeting the requirements of Section 61-2c-503, the division may answer, initiate review proceedings, or appear in a proceeding:
- (a) in the name of the defendant to the action; or
  - (b) on behalf of the fund.
- (2) The division may settle a claim subject to:
- (a) the application of a petitioner; and
  - (b) court approval.

Enacted by Chapter 297, 2004 General Session

**61-2c-505. Court determination and order.**

If the court determines that a claim should be levied against the portion of the fund allocated to carry out this chapter, the court shall enter an order requiring the division to pay from the fund the portion of a final judgment that is payable from the fund under Section 61-2c-503.

Amended by Chapter 379, 2010 General Session

**61-2c-506. Insufficient funds to satisfy judgment -- Procedure and interest.**

If the money deposited in the fund and allotted for satisfying judgments against



licensees is insufficient to satisfy an authorized claim for payment, the division shall, when sufficient money has been deposited in the fund, satisfy the unpaid claims in the order they originally were filed, together with accumulated interest at the rate allowable on judgments under Section 15-1-4.

Enacted by Chapter 297, 2004 General Session

**61-2c-507. Division subrogated -- Authority to revoke license.**

- (1) If the division pays a person from the fund in accordance with this part:
  - (a) the division is subrogated to the rights of that person for the amounts paid out of the fund; and
  - (b) any amount and interest recovered by the division shall be deposited in the fund.
- (2) (a) Subject to Subsection (2)(b), the license of a licensee for whom payment from the fund is made under this part is automatically revoked as of the earlier of the day on which:
  - (i) the division is ordered by a court to pay from the fund; or
  - (ii) the division pays from the fund.
  - (b) (i) A person whose license is revoked under Subsection (2)(a) may appeal the revocation in a de novo hearing conducted by the commission:
    - (A) after the revocation; and
    - (B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
  - (ii) The commission may delegate:
    - (A) to the division or an administrative law judge the authority to conduct a hearing described in Subsection (2)(b)(i); or
    - (B) to the division the authority to make a decision on whether relief from a revocation should be granted.
- (3) Unless the revocation is not upheld after a hearing described in Subsection (2)(b), a licensee whose license is revoked pursuant to Subsection (2) may not apply for a new license until the licensee pays into the fund:
  - (a) the amount paid out of the fund on behalf of the licensee; and
  - (b) interest at a rate determined by the division with the concurrence of the commission.

Amended by Chapter 289, 2011 General Session

**61-2c-508. Failure to comply.**

The failure of a person to comply with this part is a waiver of any right provided under this part.

Enacted by Chapter 297, 2004 General Session

**61-2c-509. Disciplinary actions.**

- (1) This part does not limit the authority of the director or commission to take disciplinary action against a licensee for a violation of:
  - (a) this chapter; or

- (b) rules made by the division under this chapter.
- (2) The repayment in full of all obligations to the fund by a licensee does not nullify or modify the effect of a disciplinary proceeding brought under:
  - (a) this chapter; or
  - (b) rules made by the division under this chapter.

Amended by Chapter 372, 2009 General Session

**61-2c-510. Money accumulated -- Purpose.**

- (1) The division may use money accumulated in the fund in excess of the amount necessary to satisfy claims to:
  - (a) investigate violations of this chapter related to fraud; and
  - (b) advance education and research in the field of residential mortgage loans.
- (2) The division may use the excess money described in Subsection (1) only in a manner consistent with Subsection (1), including for:
  - (a) courses sponsored by the division;
  - (b) courses offered by the division in conjunction with a university or college in Utah;
  - (c) contracting for a research project for the state in the field of residential mortgage loans;
  - (d) funding the salaries and training expenses of division staff members who are employed in positions related to the education of mortgage licensees;
  - (e) funding the training expenses of division staff members who are employed in positions conducting investigations of complaints under this chapter; and
  - (f) publishing and distributing educational materials to:
    - (i) licensees; and
    - (ii) applicants for licensure.

Amended by Chapter 325, 2007 General Session

**61-2d-101. Title.**

This chapter is known as the "Utah High Cost Home Loan Act."

Enacted by Chapter 252, 2004 General Session

**61-2d-102. Definitions.**

As used in this part:

- (1) "Accelerate" means a demand for immediate repayment of the entire balance of a residential mortgage loan.
- (2) "Borrower" means a person that:
  - (a) seeks a high-cost mortgage; or
  - (b) is obligated under a high-cost mortgage.
- (3) "High-cost mortgage" means a borrower credit transaction that is secured by the borrower's principal dwelling, if any of the following apply with respect to such borrower credit transaction:
  - (a) the transaction is secured by a first mortgage on the borrower's principal

dwelling and the annual percentage rate on the credit, at the consummation of the transaction, will exceed by more than eight percentage points the yield on treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the lender;

(b) the transaction is secured by a junior or subordinate mortgage on the borrower's principal dwelling and the annual percentage rate on the credit, at the consummation of the transaction, will exceed 10 percentage points the yield on treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the lender; or

(c) (i) the total points and fees payable at or before the transaction will exceed the greater of 8% of the total loan amount or \$400;

(ii) (A) the \$400 figure shall be adjusted annually on January 1 to match the adjusted number adopted by the Board of Governors of the Federal Reserve in accordance with Section 226.32(a)(1)(ii) of the Code of Federal Regulations; or

(B) if the Board of Governors of the Federal Reserve System does not announce an adjusted figure, the last adjustment of the \$400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1; and

(d) the loan is made by or originated through a person or business required to hold a license as provided in Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act.

(4) "Lender" means a person that:

(a) offers a high-cost mortgage; or

(b) extends a high-cost mortgage; and

(c) is required to have a license as provided in Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act.

(5) "Prepay" or "prepayment" means to make a payment to a lender that:

(a) is more than the amount of the next scheduled payment due;

(b) pays more than half of the principal balance of the high-cost mortgage; and

(c) is paid more than 24 months before the last scheduled payment according to the terms of the high-cost mortgage when it is made.

(6) "Residential mortgage transaction" means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the borrower's principal dwelling to finance the acquisition or initial construction of that dwelling.

(7) "Reverse mortgage transaction" means a nonrecourse borrower credit obligation in which:

(a) a mortgage, deed of trust, or equivalent consensual security interest securing one or more advances is created in the borrower's principal dwelling; and

(b) any principal, interest, or shared appreciation or equity is due and payable, other than in the case of default, only after:

(i) the borrower dies;

(ii) the dwelling is transferred; or

- (iii) the borrower ceases to occupy the dwelling as a principal dwelling.

Amended by Chapter 372, 2009 General Session

**61-2d-103. Prepayment penalty.**

(1) The terms of a high-cost mortgage loan may contain terms under which a borrower must pay a penalty for prepayment.

(a) However, a penalty for prepayment cannot be assessed more than 36 months after the loan was originally made.

(b) The amount of the penalty may not exceed the total amount of interest paid at 80% of the immediately preceding six scheduled payments.

(2) For purposes of this section, any method of computing a refund or unearned scheduled interest is a prepayment penalty if it is less favorable to the borrower than the actuarial method.

(3) Notwithstanding Subsection (1), a high-cost mortgage may not require a prepayment penalty if:

(a) the high-cost mortgage is paid with the proceeds of a new loan by the same lender or an affiliate of that lender; or

(b) the penalty is prohibited under other applicable law.

(4) If a prepayment does not pay the full amount owed on the high-cost mortgage when the prepayment is made, the penalty shall be reduced by a percentage equal to the percentage of the balance owed before the prepayment that remains unpaid.

Enacted by Chapter 252, 2004 General Session

**61-2d-104. Negative amortization prohibited.**

A high cost mortgage shall provide for regular, periodic payments sufficient to pay:

(1) all accrued interest and a portion of principal on the scheduled due date for each payment; and

(2) the full amount owed during the term of the loan, if no late fees or other contingent charges are incurred.

Enacted by Chapter 252, 2004 General Session

**61-2d-105. Financing points and fees -- Restrictions.**

(1) A lender may not, in connection with the formation or consummation of a high-cost mortgage, finance, directly or indirectly, any portion of the points, fees, or other charges payable to the lender or any third party in an amount in excess of 8% of the total loan amount, unless the following additional disclosures are made to the borrower in conspicuous type size:

(a) "You are not required to complete this agreement merely because you have received these disclosures or have signed the loan application."

(b) "If you obtain this loan, the lender will have a mortgage on your home. You could lose your home or property, and any money you have put into it, if you do not

meet your obligations under this loan."

(c) "The timing and amount of payments on debts you already are carrying contribute to the credit rating that is used to determine whether you may get a new loan and how much you will pay for that new loan. You should not accept any advice to ignore or delay making any payment on loans you already have, even if those loans will be paid off with the new loan."

(d) "You may get into serious financial difficulties if you use this loan to pay off old debts and then run up other new debts."

(2) The disclosures required by this section shall be given to the borrower no less than three business days prior to consummation of the transaction.

(3) After providing the disclosure required by this section, a lender may not change the terms of the extension of credit if such changes make the disclosures inaccurate, unless new disclosures are provided that meet the requirements of this section.

(4) A lender may provide new disclosures pursuant to Subsection (3) by telephone, if:

- (a) the change is initiated by the borrower; and
- (b) at the consummation of the transaction under which the credit is extended:
  - (i) the lender provides to the borrower the new disclosures in writing; and
  - (ii) the lender and borrower certify in writing that the new disclosures were provided by telephone, at least three days prior to the date of consummation of the transaction.

Enacted by Chapter 252, 2004 General Session

**61-2d-106. Arbitration clauses.**

To be valid, an arbitration clause in a high-cost mortgage contract must comply with the standards set forth in Title 78B, Chapter 11, Utah Uniform Arbitration Act or the Federal Arbitration Act, or any successor acts.

Amended by Chapter 3, 2008 General Session

**61-2d-107. Prohibition on single premium credit life insurance.**

A borrower credit transaction involving a high-cost mortgage may not include:

(1) the offer or sale of any insurance policy, on a single premium or single fee basis, that insures, guarantees, or indemnifies the repayment of the outstanding balance of the loan against:

- (a) death;
  - (b) illness;
  - (c) accident;
  - (d) disability; or
  - (e) unemployment of the borrower; or
- (2) debt cancellation or a debt suspension agreement.

Enacted by Chapter 252, 2004 General Session

**61-2d-108. Increase in employees.**

Funds allocated for investigations in this chapter may only be used to employ additional employees if there is a 10% increase in caseloads.

Enacted by Chapter 252, 2004 General Session

**61-2d-109. Copies.**

The lender shall provide, at no cost to the borrower, a complete set of all documents pertaining to the transaction, including copies of all documents to be executed or recorded and any loan documents changed at the closing:

- (1) at the time of the closing if done in person; or
- (2) no later than three business days from the closing if done by mail or any other format.

Enacted by Chapter 252, 2004 General Session

**61-2d-110. Encouraging default prohibited.**

(1) A lender may not recommend or encourage default or nonpayment leading to foreclosure on an existing loan or other debt prior to and in connection with the closing or planned closing of a high-cost mortgage that refinances all or any portion of such existing loan or debt.

(2) This section applies to all loans.

Enacted by Chapter 252, 2004 General Session

**61-2d-111. Mortgage forms.**

All lines, figures, forms, and blanks that regulate, govern, control, and authorize a mortgage must be filled in before the documents are signed.

Enacted by Chapter 252, 2004 General Session

**61-2d-112. Notice of information available to borrowers.**

(1) In addition to any other notice or disclosure a lender or title company may provide to a borrower seeking, obtaining, or inquiring about a high-cost mortgage, the lender shall provide the borrower any brochure or other document information prepared by a federal or state authority in a form intended to inform consumers about home loans or consumer credit on financing or educational resources on financing.

(2) The requirement set forth in Subsection (1) may include:

- (a) the posting, in a public area of the office, notice indicating that educational resources are available;
- (b) a list of educational opportunities or programs offered in the surrounding area including the program name and phone number;
- (c) a printed brochure or booklet on responsible lending and borrowing available to the borrower at no charge; or
- (d) information from the Department of Financial Institutions on its responsible consumer financial educational program.

Enacted by Chapter 252, 2004 General Session

**61-2d-113. Effect of failure to comply.**

Failure to provide the notices or information described in Subsection 61-2d-105(1) and Sections 61-2d-111 and 61-2d-112 does not affect the enforceability of the loan or any of its terms.

Enacted by Chapter 252, 2004 General Session

**61-2e-101. Title.**

This chapter is known as the "Appraisal Management Company Registration and Regulation Act."

Enacted by Chapter 269, 2009 General Session

**61-2e-102. Definitions.**

As used in this chapter:

- (1) "Applicable appraisal standards" means:
  - (a) the Uniform Standards for Professional Appraisal Practice:
    - (i) published by the Appraisal Foundation; and
    - (ii) as adopted under Section 61-2g-403;
  - (b) Chapter 2g, Real Estate Appraiser Licensing and Certification Act; and
  - (c) rules made by the board under Chapter 2g, Real Estate Appraiser Licensing and Certification Act.
- (2) "Appraisal" is as defined in Section 61-2g-102.
- (3) "Appraisal foundation" is as defined in Section 61-2g-102.
- (4) "Appraisal management company" means an entity that serves as a third-party broker of an appraisal service between a client and an appraiser by:
  - (a) administering a network of appraisers to perform real estate appraisal activities for one or more clients;
  - (b) (i) receiving a request for a real estate appraisal activity from a client; and
  - (ii) for a fee paid by the client, entering into an agreement with one or more appraisers to perform the real estate appraisal activity contained in the request; or
  - (c) any other means.
- (5) "Appraisal management service" means a process of:
  - (a) receiving a request for the performance of a real estate appraisal activity from a client; and
  - (b) for a fee paid by the client, entering into an agreement with one or more appraisers to perform the real estate appraisal activity contained in the request.
- (6) "Appraisal report" is as defined in Section 61-2g-102.
- (7) "Appraiser" means an individual who engages in a real estate appraisal activity.
- (8) "Appraiser panel" means a group of appraisers that are selected by an appraisal management company to perform real estate appraisal activities for the appraisal management company.

(9) "Board" means the Real Estate Appraiser Licensing and Certification Board that is created in Section 61-2g-204.

(10) "Client" means a person that enters into an agreement with an appraisal management company for the performance of a real estate appraisal activity.

(11) "Concurrence" means that the entities that are given a concurring role must jointly agree before an action may be taken.

(12) "Controlling person" means:

(a) an owner, officer, or director of an entity seeking to offer appraisal management services;

(b) an individual employed, appointed, or authorized by an appraisal management company who has the authority to:

(i) enter into a contractual relationship with a client for the performance of an appraisal management service; and

(ii) enter into an agreement with an appraiser for the performance of a real estate appraisal activity; or

(c) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

(13) "Director" means the director of the division.

(14) "Division" means the Division of Real Estate of the Department of Commerce.

(15) "Entity" means:

(a) a corporation;

(b) a partnership;

(c) a sole proprietorship;

(d) a limited liability company;

(e) another business entity; or

(f) a subsidiary or unit of an entity described in Subsections (15)(a) through (e).

(16) "Person" means an individual or an entity.

(17) "Real estate appraisal activity" is as defined in Section 61-2g-102.

Amended by Chapter 289, 2011 General Session

#### **61-2e-103. Rulemaking.**

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may make rules, with the concurrence of the division, that are:

(1) consistent with this chapter; and

(2) necessary to implement this chapter.

Amended by Chapter 289, 2011 General Session

#### **61-2e-104. Exemption.**

This chapter does not apply to:

(1) an entity that:

(a) exclusively employs an individual on an employer-employee basis for the performance of a real estate appraisal activity in the normal course of the entity's



business;

(b) is responsible for ensuring that the real estate appraisal activity being performed by an employee is performed in accordance with applicable appraisal standards; and

(c) is an appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a federal financial institution regulatory agency;

(2) an individual who:

(a) is an appraiser; and

(b) in the normal course of business enters into an agreement, whether written or otherwise, with another appraiser for the performance of a real estate appraisal activity that the individual cannot complete for any reason, including:

(i) competency;

(ii) work load;

(iii) schedule; or

(iv) geographic location; or

(3) an individual who:

(a) in the normal course of business enters into an agreement, whether written or otherwise, with an appraiser for the performance of a real estate appraisal activity; and

(b) under the agreement, cosigns the report of the appraiser performing the real estate appraisal activity upon the completion of the real estate appraisal activity.

Amended by Chapter 166, 2012 General Session

**61-2e-201. Registration required -- Qualification for registration.**

(1) Unless exempted under Section 61-2e-104, an appraisal management company is required to register under this chapter if the company:

(a) contracts with one or more appraisers for the performance of 10 or more appraisals in the state in a calendar year; or

(b) oversees a network or panel of more than 15 appraisers certified or licensed in the state.

(2) Unless registered under this chapter or exempt under Section 61-2e-104, an entity may not with regard to a real estate appraisal activity for real estate located in this state:

(a) directly or indirectly engage or attempt to engage in business as an appraisal management company;

(b) directly or indirectly engage or attempt to perform an appraisal management service; or

(c) advertise or hold itself out as engaging in or conducting business as an appraisal management company.

(3) To qualify to be registered as an appraisal management company under this chapter:

(a) each individual who owns, directly or indirectly, more than 10% of the appraisal management company shall:

(i) be of good moral character, as determined by the board; and

(ii) not have had a license or certificate to engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or revoked in this state or in another state; and

(b) the appraisal management company shall designate a main contact for communication between the appraisal management company and either the board or division who:

(i) is a controlling person;

(ii) is of good moral character, as determined by the board; and

(iii) has not had a license or certificate to engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or revoked in this state or in another state.

(4) This section applies without regard to whether the entity uses the term:

- (a) "appraisal management company";
- (b) "mortgage technology company"; or
- (c) another name.

Amended by Chapter 166, 2012 General Session

**61-2e-202. Initial registration process.**

(1) (a) To register under this chapter as an appraisal management company, an entity shall:

(i) file with the division a registration application in a form prescribed by the division;

(ii) pay to the division a fee determined in accordance with Section 63J-1-504;

(iii) if the entity is not a resident of this state, submit an irrevocable consent for service of process meeting the requirements of Subsection (3); and

(iv) have the application for registration approved by the division.

(b) The division shall approve an application if the division finds that the entity:

- (i) complies with this Subsection (1); and
- (ii) meets the qualifications under Section 61-2e-201.

(c) The division may, upon compliance with Title 63G, Chapter 4, Administrative Procedures Act, deny the issuance of a registration to an applicant on any ground enumerated in this chapter.

(d) If an entity pays a fee or costs to the division with a negotiable instrument or other method that is not honored for payment:

(i) the transaction for which the payment is submitted is voidable by the division;

(ii) the division may reverse the transaction if payment of the applicable fee or costs is not received in full; and

(iii) the entity's registration is automatically suspended:

- (A) beginning the day on which the payment is due; and
- (B) ending the day on which payment is made in full.

(2) A registration application shall include the following:

- (a) the name of the entity seeking registration;
- (b) a business address of the entity seeking registration;
- (c) telephone contact information of the entity seeking registration;
- (d) if the entity is not an entity domiciled in this state, the name and contact

information for the entity's agent for service of process in this state;

(e) for each individual who owns 10% or more of the entity:

(i) the individual's name, address, and contact information;

(ii) a statement of whether or not the individual has had a license or certificate to engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or revoked in this state or in another state; and

(iii) (A) fingerprint cards in a form acceptable to the division at the time the registration application is filed; and

(B) consent to a criminal background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application;

(f) the name, address, and contact information for each controlling person;

(g) for the controlling person designated as the contact as required by Section 61-2e-201:

(i) a statement of whether or not the individual has had a license or certificate to engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or revoked in this state or in another state; and

(ii) (A) fingerprint cards in a form acceptable to the division at the time the registration application is filed; and

(B) consent to a criminal background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application;

(h) provide an explanation required by:

(i) Section 61-2e-301, related to adding an individual to an appraiser panel;

(ii) Section 61-2e-302, related to the review of the work of an appraiser; and

(iii) Section 61-2e-303, related to recordkeeping; and

(i) any other information required by the board.

(3) An irrevocable consent for service of process required to be filed under Subsection (1) shall provide that process may be served on the entity by delivering the process to the director if:

(a) the service of process is for an action:

(i) in a court of this state against an entity; and

(ii) arising out of an act governed by this chapter; and

(b) a plaintiff cannot, in the exercise of due diligence, obtain personal service upon the entity.

Amended by Chapter 289, 2011 General Session

**61-2e-203. Criminal background check -- Conditional registration -- Changes in ownership or controlling person.**

(1) The division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for an individual described in Subsection 61-2e-202(2)(e) or (g) through the national criminal history system or any successor system.

(2) (a) The entity filing the application under Section 61-2e-202 shall pay the cost of the criminal background check and the fingerprinting.

(b) Money paid to the division by an entity for the cost of a criminal background check is nonlapsing.

(3) (a) A registration issued under Section 61-2e-202 is conditional, pending completion of a criminal background check.

(b) (i) A registration shall be immediately and automatically revoked if a criminal background check discloses that an individual described in Subsection 61-2e-202(2)(e) or (g) fails to accurately disclose a criminal history involving:

(A) the appraisal industry;

(B) the appraisal management industry; or

(C) a felony conviction on the basis of an allegation of fraud, misrepresentation, or deceit.

(ii) If a criminal background check discloses that an individual described in Subsection 61-2e-202(2)(e) or (g) fails to accurately disclose a criminal history other than that described in Subsection (3)(b)(i), the division shall review the application, and in accordance with rules made by the division pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may:

(A) place a condition on a registration;

(B) place a restriction on a registration;

(C) revoke a registration; or

(D) refer the application to the board for a decision.

(c) An entity whose conditional registration is revoked under Subsection (3)(b)(i) or whose license is conditioned, restricted, or revoked under Subsection (3)(b)(ii) is entitled to a post-revocation hearing conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to challenge the revocation.

(d) The board shall decide whether relief from the revocation of a registration under this Subsection (3) will be granted, except that relief from an automatic revocation under Subsection (3)(b)(i) may be granted only if:

(i) the criminal history upon which the revocation is based:

(A) did not occur; or

(B) is the criminal history of another individual;

(ii) (A) the revocation is based on a failure to accurately disclose a criminal history; and

(B) the entity has a reasonable good faith belief at the time of application that there is no criminal history to be disclosed; or

(iii) the division fails to follow the prescribed procedure for the revocation.

(e) The board may delegate to the division the authority to conduct a post-revocation hearing under Subsection (3)(d).

(f) If a registration is revoked or a revocation under this Subsection (3) is upheld after a post-revocation hearing, the entity may not apply for a new registration until at least 12 months after the day on which the registration is revoked.

(4) (a) An appraisal management company shall comply with this Subsection (4) if there is a change in:

(i) an individual who owns 10% or more of the entity; or

(ii) the controlling person designated as the contact as required by Section 61-2e-201.

(b) If there is a change in an individual described in Subsection (4)(a), within 30 days of the day on which the change occurs, the appraisal management company shall file with the division:

- (i) the individual's name, address, and contact information;
- (ii) a statement of whether or not the individual has had a license or certificate to engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or revoked in this state or in another state; and
- (iii) (A) fingerprint cards in a form acceptable to the division at the time the registration application is filed; and  
(B) consent to a criminal background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application.

Amended by Chapter 289, 2011 General Session

Amended by Chapter 342, 2011 General Session

**61-2e-204. Renewal of a registration.**

(1) (a) A registration under this chapter expires two years from the day on which the registration is filed.

(b) Notwithstanding Subsection (1)(a), the time period of a registration may be extended or shortened by as much as one year to maintain or change a renewal cycle established by rule by the division.

(2) To renew a registration under this chapter, before the day on which the registration expires, an appraisal management company shall:

(a) file with the division a renewal registration application on a form prescribed by the division;

(b) pay to the division a fee determined in accordance with Section 63J-1-504; and

(c) file with the division a certificate evidencing that the appraisal management company has secured and will maintain a surety bond with one or more corporate sureties authorized to do business in the state in the amount of at least \$25,000, as the division provides by rule.

(3) A renewal registration application shall include substantially similar information to the information required under Section 61-2e-202, except that for an individual described in Subsection 61-2e-202(2)(e) or (g), the entity is required to report whether the individual has had:

(a) (i) a conviction of a criminal offense;

(ii) the entry of a plea in abeyance to a criminal offense; or

(iii) the potential resolution of a criminal case by:

(A) a diversion agreement; or

(B) another agreement under which a criminal charge is held in suspense for a period of time;

(b) a filing of personal bankruptcy or bankruptcy of a business that transacts the appraisal management services;

(c) the suspension, revocation, surrender, cancellation, or denial of a professional license or certification, whether the license or registration is issued by this state or another jurisdiction; or

(d) the entry of a cease and desist order or a temporary or permanent injunction:

(i) against the individual by a court or government agency; and

(ii) on the basis of:

(A) conduct or a practice involving the business of appraisal management services; or

(B) conduct involving fraud, misrepresentation, or deceit.

(4) A registration expires if it is not renewed on or before its expiration date, except that for a period of one year after the expiration date, the registration may be reinstated upon compliance with this section, including payment of a renewal fee and a late fee determined by the division and the board.

(5) Notwithstanding Subsection (4), the division may extend the term of a license that would expire under Subsection (4) except for the extension if:

(a) (i) the person complies with the requirements of this section to renew the registration; and

(ii) the renewal application remains pending at the time of the extension; or

(b) at the time of the extension, there is pending under this chapter a disciplinary action.

Amended by Chapter 292, 2013 General Session

**61-2e-301. Use of licensed or certified appraisers.**

(1) An appraisal management company required to be registered under this chapter may not enter into an agreement with an appraiser for the performance of a real estate appraisal activity unless the appraiser is licensed or certified in good standing pursuant to Chapter 2g, Real Estate Appraiser Licensing and Certification Act.

(2) (a) An appraisal management company required to be registered under this chapter shall have a system to verify that an individual added to the appraiser panel of the appraisal management company holds a license or certificate in good standing in this state pursuant to Chapter 2g, Real Estate Appraiser Licensing and Certification Act.

(b) As part of the registration process under Part 2, Registration, an appraisal management company shall biennially provide an explanation of the system described in Subsection (2)(a) in the form prescribed by the division.

Amended by Chapter 289, 2011 General Session

**61-2e-302. Adherence to standards.**

(1) An appraisal management company required to be registered under this chapter shall have a system in place to review the work of an appraiser who performs a real estate appraisal activity for the appraisal management company on a periodic basis to ensure that a real estate appraisal activity is conducted in accordance with applicable appraisal standards.

(2) As part of the registration process under Part 2, Registration, an appraisal management company shall biennially provide an explanation of the system described in Subsection (1) in the form prescribed by the division.

Enacted by Chapter 269, 2009 General Session

**61-2e-303. Recordkeeping.**

(1) An appraisal management company required to be registered under this

chapter shall maintain a detailed record of the following for the same time period an appraiser is required to maintain an appraisal record for the same real estate appraisal activity:

- (a) a real estate appraisal activity request that the appraisal management company receives; and
- (b) the appraiser that performs the real estate appraisal activity described in Subsection (1) for the appraisal management company.

(2) As part of the registration process under Part 2, Registration, an appraisal management company shall biennially provide an explanation of its recordkeeping described in Subsection (1) in the form prescribed by the division.

Enacted by Chapter 269, 2009 General Session

**61-2e-304. Required disclosure.**

(1) Before an appraisal management company may receive money from a client for a real estate appraisal activity requested by the client, the appraisal management company shall disclose to the client the total compensation that the appraisal management company pays to the appraiser who performs the real estate appraisal activity.

(2) The board may define by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) what constitutes the total compensation that an appraisal management company pays to an appraiser who performs a real estate appraisal activity, except that the rules shall provide for disclosing this amount:

- (i) as a dollar amount; or
- (ii) as a percentage of the total amount charged to a client by an appraisal management company;

(b) the method an appraisal management company is required to use in calculating the figures described in Subsection (2)(a); and

(c) the form and content of the disclosure required by Subsection (1).

Enacted by Chapter 269, 2009 General Session

**61-2e-305. Employee requirements.**

(1) Subsection (2) applies to an individual who:

- (a) (i) is an employee of an appraisal management company; or
- (ii) works on behalf of an appraisal management company; and
- (b) (i) selects an appraiser for the performance of a real estate appraisal activity for the appraisal management company; or
- (ii) reviews a completed appraisal.

(2) (a) An individual described in Subsection (1) is required to be appropriately trained and qualified in the performance of an appraisal, as determined by the board by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) For purposes of an individual described in Subsection (1) who reviews the work of an appraiser, to comply with this Subsection (2), the individual shall

demonstrate knowledge of the applicable appraisal standards, as determined by the board by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Enacted by Chapter 269, 2009 General Session

**61-2e-306. Removal of appraiser from appraisal panel.**

Except within the first 30 days after the day on which an appraiser is first added to the appraiser panel of an appraisal management company, an appraisal management company may not remove the appraiser from its appraiser panel, or otherwise refuse to assign a request for a real estate appraisal activity to an appraiser without:

- (1) notifying the appraiser in writing of:
  - (a) the reason why the appraiser is being removed from the appraiser panel of the appraisal management company; and
  - (b) the nature of the alleged conduct or violation if the appraiser is being removed from the appraiser panel for:
    - (i) illegal conduct; or
    - (ii) a violation of the applicable appraisal standards; and
- (2) providing an opportunity for the appraiser to respond to the notification of the appraisal management company.

Enacted by Chapter 269, 2009 General Session

**61-2e-307. Prohibited acts -- Exclusions.**

(1) An appraisal management company required to be registered under this chapter and a controlling person, employee, or agent of the appraisal management company may not:

- (a) engage in an act of coercion, extortion, intimidation, or bribery for any purpose related to an appraisal;
  - (b) compensate an appraiser in a manner that the person should reasonably know would result in the appraiser not conducting a real estate appraisal activity in a manner consistent with applicable appraisal standards;
  - (c) engage in the business of an appraisal management company under an assumed or fictitious name not properly registered in the state;
  - (d) accept a contingent fee for performing an appraisal management service if the fee is contingent on:
    - (i) the appraisal report having a predetermined analysis, opinion, or conclusion;
    - (ii) the analysis, opinion, conclusion, or valuation reached in an appraisal report;
- or
- (iii) the consequences resulting from the appraisal assignment;
  - (e) require an appraiser to indemnify the appraisal management company against liability except liability for errors and omissions by the appraiser; or
  - (f) alter, modify, or otherwise change a completed appraisal report submitted by an appraiser.

(2) An appraisal management company required to be registered under this



chapter, or a controlling person, employee, or agent of the appraisal management company may not influence or attempt to influence the development, reporting, or review of an appraisal through:

- (a) coercion;
- (b) extortion;
- (c) collusion;
- (d) compensation;
- (e) instruction;
- (f) inducement;
- (g) intimidation;
- (h) bribery; or
- (i) any other manner that would constitute undue influence.

(3) A violation of Subsection (2) includes doing one or more of the following for a purpose listed in Subsection (2):

- (a) withholding or threatening to withhold timely payment for an appraisal;
- (b) withholding or threatening to withhold future business for an appraiser;
- (c) taking adverse action or threatening to take adverse action against an appraiser regarding use of the appraiser for a real estate appraisal activity;

(d) expressly or by implication promising future business or increased compensation for an appraiser;

(e) conditioning one or more of the following on the opinion, conclusion, or valuation to be reached, or on a preliminary estimate or opinion requested from an appraiser:

- (i) a request for a real estate appraisal activity; or
  - (ii) the payment of consideration;
- (f) requesting that an appraiser provide at any time before the appraiser's completion of a real estate appraisal activity:
- (i) an estimated, predetermined, or desired valuation in an appraisal report; or
  - (ii) an estimated value or comparable sale;
- (g) except for a copy of a sales contract for a purchase transaction, providing to an appraiser:

(i) an anticipated, estimated, encouraged, or desired value for a subject property; or

(ii) a proposed or target amount to be loaned to the borrower;

(h) providing to an appraiser, or an individual related to the appraiser, stock or other financial or non-financial benefits;

(i) allowing the removal of an appraiser from an appraiser panel, without prior written notice to the appraiser as required by Section 61-2e-306;

(j) obtaining, using, or paying for a subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction unless:

(i) (A) there is a reasonable basis to believe that the initial appraisal does not meet applicable appraisal standards; and

(B) the reasonable basis is noted in the loan file; or

(ii) the subsequent appraisal or automated valuation model is done pursuant to a pre- or post-funding appraisal review or quality control process in accordance with applicable appraisal standards; or

(k) engaging in any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality.

(4) This section may not be construed to prohibit an appraisal management company from requesting that an appraiser:

- (a) provide additional information about the basis for a valuation; or
- (b) correct an objective factual error in an appraisal report.

Amended by Chapter 166, 2012 General Session

**61-2e-401. Division authority -- Immunity.**

(1) (a) In addition to a power or duty expressly provided in this chapter, the division may:

(i) receive and act on a complaint including:

(A) taking action designed to obtain voluntary compliance with this chapter, including the issuance of a cease and desist order if the person against whom the order is issued is given the right to petition the board for review of the order; or

(B) commencing an administrative or judicial proceeding on the division's own initiative;

(ii) investigate an entity required to be registered under this chapter, regardless of whether the entity is located in Utah; and

(iii) employ one or more investigators, clerks, or other employees or agents if:

(A) approved by the executive director; and

(B) within the budget of the division.

(b) A failure to respond to a request by the division in an investigation under this chapter is considered to be a separate violation of this chapter, including:

(i) failing to respond to a subpoena;

(ii) withholding evidence; or

(iii) failing to produce a document or record.

(2) (a) If a person is found to have violated this chapter or a rule made under this chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract, document, or record required under this chapter, including the costs incurred to copy an electronic book, paper, contract, document, or record in a universally readable format.

(b) If a person fails to pay the costs described in Subsection (2)(a) when due, the person's registration is automatically suspended:

(i) beginning the day on which the payment of costs is due; and

(ii) ending the day on which the costs are paid.

(3) The division is immune from a civil action or criminal prosecution for initiating or assisting in a lawful investigation of an act or participating in a disciplinary proceeding under this chapter if the division takes the action:

(a) without malicious intent; and

(b) in the reasonable belief that the action is taken pursuant to the powers and duties vested in the division under this chapter.

Amended by Chapter 166, 2012 General Session

**61-2e-402. Enforcement -- Immunity for board.**

(1) (a) The board may order disciplinary action, with the concurrence of the division, against:

- (i) an entity registered under this chapter;
- (ii) an entity required to be registered under this chapter; or
- (iii) a controlling person of an entity described in this Subsection (1)(a).

(b) If the board, with the concurrence of the division, makes a finding described in Subsection (2) pursuant to an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the board, with the concurrence of the division, may:

- (i) revoke, suspend, or place an entity's registration on probation;
- (ii) deny an entity's original registration;
- (iii) deny an entity's renewal registration;
- (iv) in the case of denial or revocation of a registration, set a waiting period for an applicant to apply for a registration under this chapter;
- (v) order remedial education;
- (vi) impose a civil penalty upon a person not to exceed the greater of:
  - (A) \$5,000 for each violation; or
  - (B) the amount of any gain or economic benefit from a violation;
- (vii) issue a cease and desist order; or
- (viii) do a combination of Subsections (1)(b)(i) through (vii).

(2) Subsection (1) applies if the board finds, with the concurrence of the division, that a person has engaged in, is attempting to, or has attempted to engage in:

- (a) an act that violates this chapter;
- (b) an act that violates a rule made under this chapter;
- (c) procuring a registration for the person or another person by fraud, misrepresentation, or deceit;
- (d) paying money or attempting to pay money other than a fee provided for by this chapter to an employee of the division to procure a registration under this chapter;
- (e) an act or omission in the business of an appraisal management company that constitutes dishonesty, fraud, or misrepresentation;
- (f) unprofessional conduct as defined by statute or rule; or
- (g) other conduct that constitutes dishonest dealing.

(3) (a) If the board, with the concurrence of the director, issues an order that orders a fine or remedial education as part of a disciplinary action against a person, including a stipulation and order, the board shall state in the order the deadline by which the person shall comply with the fine or remedial education requirements.

(b) If a person fails to comply by the stated deadline, the person's registration shall be immediately and automatically suspended:

- (i) beginning the day specified in the order as the deadline for compliance; and
- (ii) ending the day on which the person complies in full with the order.

(c) If a person fails to pay a fine required by an order, the division shall begin a collection process:

- (i) established by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
- (ii) subject to Title 63A, Chapter 3, Part 5, Office of State Debt Collection.

(4) To the extent permitted by federal law, the board, with the concurrence of the division, may bring a disciplinary proceeding under this chapter for a violation of 15 U.S.C. Sec. 1639e(i).

(5) A member of the board is immune from a civil action or criminal prosecution for a disciplinary proceeding under this chapter if:

- (a) the action is taken without malicious intent; and
- (b) in the reasonable belief that the action taken was taken pursuant to the powers and duties vested in a member of the board under this chapter.

Amended by Chapter 369, 2012 General Session

**61-2f-101. Title.**

This chapter is known as the "Real Estate Licensing and Practices Act."

Enacted by Chapter 379, 2010 General Session

**61-2f-102. Definitions.**

As used in this chapter:

- (1) "Associate broker" means an individual who is:
  - (a) employed or engaged as an independent contractor by or on behalf of a principal broker to perform an act set out in Subsection (18) for valuable consideration; and
  - (b) licensed under this chapter as an associate broker.
- (2) "Branch office" means a principal broker's real estate brokerage office that is not the principal broker's main office.
- (3) "Business day" means a day other than:
  - (a) a Saturday;
  - (b) a Sunday; or
  - (c) a federal or state holiday.
- (4) "Business opportunity" means the sale, lease, or exchange of any business that includes an interest in real estate.
- (5) "Commission" means the Real Estate Commission established under this chapter.
- (6) "Concurrence" means the entities given a concurring role must jointly agree for action to be taken.
- (7) "Condominium unit" is as defined in Section 57-8-3.
- (8) "Condominium homeowners' association" means the condominium unit owners acting as a group in accordance with declarations and bylaws.
- (9) (a) "Condominium hotel" means one or more condominium units that are operated as a hotel.
  - (b) "Condominium hotel" does not mean a hotel consisting of condominium units, all of which are owned by a single entity.
- (10) "Director" means the director of the Division of Real Estate.
- (11) "Division" means the Division of Real Estate.
- (12) "Entity" means:
  - (a) a corporation;

- (b) a partnership;
  - (c) a limited liability company;
  - (d) a company;
  - (e) an association;
  - (f) a joint venture;
  - (g) a business trust;
  - (h) a trust; or
  - (i) any organization similar to an entity described in Subsections (12)(a) through (h).
- (13) "Executive director" means the director of the Department of Commerce.
- (14) "Foreclosure rescue" means, for compensation or with the expectation of receiving valuable consideration, to:
- (a) engage, or offer to engage, in an act that:
    - (i) the person represents will assist a borrower in preventing a foreclosure; and
    - (ii) relates to a transaction involving the transfer of title to residential real property; or
  - (b) as an employee or agent of another person:
    - (i) solicit, or offer that the other person will engage in an act described in Subsection (14)(a); or
    - (ii) negotiate terms in relationship to an act described in Subsection (14)(a).
- (15) "Loan modification assistance" means, for compensation or with the expectation of receiving valuable consideration, to:
- (a) act, or offer to act, on behalf of a person to:
    - (i) obtain a loan term of a residential mortgage loan that is different from an existing loan term including:
      - (A) an increase or decrease in an interest rate;
      - (B) a change to the type of interest rate;
      - (C) an increase or decrease in the principal amount of the residential mortgage loan;
      - (D) a change in the number of required period payments;
      - (E) an addition of collateral;
      - (F) a change to, or addition of, a prepayment penalty;
      - (G) an addition of a cosigner; or
      - (H) a change in persons obligated under the existing residential mortgage loan;
    - or
    - (ii) substitute a new residential mortgage loan for an existing residential mortgage loan; or
  - (b) as an employee or agent of another person:
    - (i) solicit, or offer that the other person will engage in an act described in Subsection (15)(a); or
    - (ii) negotiate terms in relationship to an act described in Subsection (15)(a).
- (16) "Main office" means the address which a principal broker designates with the division as the principal broker's primary brokerage office.
- (17) "Person" means an individual or entity.
- (18) "Principal broker" means an individual who is licensed as a principal broker under this chapter and who:

(a) (i) sells or lists for sale real estate, including real estate being sold as part of a foreclosure rescue, or a business opportunity with the expectation of receiving valuable consideration;

(ii) buys, exchanges, or auctions real estate, an option on real estate, a business opportunity, or an improvement on real estate with the expectation of receiving valuable consideration; or

(iii) advertises, offers, attempts, or otherwise holds the individual out to be engaged in the business described in Subsection (18)(a)(i) or (ii);

(b) is employed by or on behalf of the owner of real estate or by a prospective purchaser of real estate and performs an act described in Subsection (18)(a), whether the individual's compensation is at a stated salary, a commission basis, upon a salary and commission basis, or otherwise;

(c) (i) with the expectation of receiving valuable consideration, manages property owned by another person; or

(ii) advertises or otherwise holds the individual out to be engaged in property management;

(d) with the expectation of receiving valuable consideration, assists or directs in the procurement of prospects for or the negotiation of a transaction listed in Subsections (18)(a) and (c);

(e) except for a mortgage lender, title insurance producer, or an employee of a mortgage lender or title insurance producer, assists or directs in the closing of a real estate transaction with the expectation of receiving valuable consideration; or

(f) (i) engages in foreclosure rescue; or

(ii) advertises, offers, attempts, or otherwise holds the person out as being engaged in foreclosure rescue.

(19) (a) "Property management" means engaging in, with the expectation of receiving valuable consideration, the management of real estate owned by another person or advertising or otherwise claiming to be engaged in property management by:

(i) advertising for, arranging, negotiating, offering, or otherwise attempting or participating in a transaction calculated to secure the rental or leasing of real estate;

(ii) collecting, agreeing, offering, or otherwise attempting to collect rent for the real estate and accounting for and disbursing the money collected; or

(iii) authorizing expenditures for repairs to the real estate.

(b) "Property management" does not include:

(i) hotel or motel management;

(ii) rental of tourist accommodations, including hotels, motels, tourist homes, condominiums, condominium hotels, mobile home park accommodations, campgrounds, or similar public accommodations for a period of less than 30 consecutive days, and the management activities associated with these rentals; or

(iii) the leasing or management of surface or subsurface minerals or oil and gas interests, if the leasing or management is separate from a sale or lease of the surface estate.

(20) "Real estate" includes leaseholds and business opportunities involving real property.

(21) (a) "Regular salaried employee" means an individual who performs a service for wages or other remuneration, whose employer withholds federal

employment taxes under a contract of hire, written or oral, express or implied.

(b) "Regular salaried employee" does not include an individual who performs services on a project-by-project basis or on a commission basis.

(22) "Reinstatement" means restoring a license that has expired or has been suspended.

(23) "Reissuance" means the process by which a licensee may obtain a license following revocation of the license.

(24) "Renewal" means extending a license for an additional licensing period on or before the date the license expires.

(25) "Sales agent" means an individual who is:

(a) affiliated with a principal broker, either as an independent contractor or an employee as provided in Section 61-2f-303, to perform for valuable consideration an act described in Subsection (18); and

(b) licensed under this chapter as a sales agent.

(26) (a) "Undivided fractionalized long-term estate" means an ownership interest in real property by two or more persons that is:

(i) a tenancy in common; or

(ii) any other legal form of undivided estate in real property including:

(A) a fee estate;

(B) a life estate; or

(C) other long-term estate.

(b) "Undivided fractionalized long-term estate" does not include a joint tenancy.

Amended by Chapter 166, 2012 General Session

### **61-2f-103. Real Estate Commission.**

(1) There is created within the division a Real Estate Commission. The commission shall:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules for the administration of this chapter that are not inconsistent with this chapter, including:

(i) licensing of:

(A) a principal broker;

(B) an associate broker; and

(C) a sales agent;

(ii) registration of:

(A) an entity; and

(B) a branch office;

(iii) prelicensing and postlicensing education curricula;

(iv) examination procedures;

(v) the certification and conduct of:

(A) a real estate school;

(B) a course provider; or

(C) an instructor;

(vi) proper handling of money received by a licensee under this chapter;

(vii) brokerage office procedures and recordkeeping requirements;

- (viii) property management;
- (ix) standards of conduct for a licensee under this chapter;
- (x) a rule made under Section 61-2f-307 regarding an undivided fractionalized long-term estate; and
- (xi) if the commission determines necessary, a rule as provided in Subsection 61-2f-306(3) regarding a legal form;
- (b) establish, with the concurrence of the division, a fee provided for in this chapter, except a fee imposed under Part 5, Real Estate Education, Research, and Recovery Fund Act;
- (c) conduct an administrative hearing not delegated by the commission to an administrative law judge or the division relating to the:
  - (i) licensing of an applicant;
  - (ii) conduct of a licensee;
  - (iii) the certification or conduct of a real estate school, course provider, or instructor regulated under this chapter; or
  - (iv) violation of this chapter by any person;
- (d) with the concurrence of the director, impose a sanction as provided in Section 61-2f-404;
- (e) advise the director on the administration and enforcement of a matter affecting the division and the real estate sales and property management industries;
- (f) advise the director on matters affecting the division budget;
- (g) advise and assist the director in conducting real estate seminars; and
- (h) perform other duties as provided by this chapter.
- (2) (a) Except as provided in Subsection (2)(b), a state entity may not, without the concurrence of the commission, make a rule that changes the rights, duties, or obligations of buyers, sellers, or persons licensed under this chapter in relation to a real estate transaction between private parties.
  - (b) Subsection (2)(a) does not apply to a rule made:
    - (i) under Title 31A, Insurance Code, or Title 7, Financial Institutions Act; or
    - (ii) by the Department of Commerce or any division or other rulemaking body within the Department of Commerce.
- (3) (a) The commission shall be comprised of five members appointed by the governor and approved by the Senate.
  - (b) Four of the commission members shall:
    - (i) have at least five years' experience in the real estate business; and
    - (ii) hold an active principal broker, associate broker, or sales agent license.
  - (c) One commission member shall be a member of the general public.
  - (d) The governor may not appoint a commission member described in Subsection (3)(b) who, at the time of appointment, resides in the same county in the state as another commission member.
  - (e) At least one commission member described in Subsection (3)(b) shall at the time of an appointment reside in a county that is not a county of the first or second class.
- (4) (a) Except as required by Subsection (4)(b), as terms of current commission members expire, the governor shall appoint each new member or reappointed member to a four-year term ending June 30.



(b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.

(c) Upon the expiration of the term of a member of the commission, the member of the commission shall continue to hold office until a successor is appointed and qualified.

(d) A commission member may not serve more than two consecutive terms.

(e) Members of the commission shall annually select one member to serve as chair.

(5) When a vacancy occurs in the membership for any reason, the governor, with the consent of the Senate, shall appoint a replacement for the unexpired term.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) (a) The commission shall meet at least monthly.

(b) The director may call additional meetings:

(i) at the director's discretion;

(ii) upon the request of the chair; or

(iii) upon the written request of three or more commission members.

(8) Three members of the commission constitute a quorum for the transaction of business.

Amended by Chapter 350, 2014 General Session

**61-2f-104. List of licensees, registrants, and certificate holders to be available.**

(1) Upon request, the division shall make available a list of the names and addresses of the persons licensed, registered, or certified by it under this chapter either directly or through a third party.

(2) A person who requests a list under Subsection (1) shall pay the costs incurred by the division to make the list available.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-105. Fees.**

(1) In addition to when expressly authorized in another provision of this chapter, the division may charge and collect reasonable fees determined by the commission with the concurrence of the division under Section 63J-1-504 to cover the costs for:

(a) issuing a new or duplicate license;

(b) registering an entity or branch office;

(c) certifying a real estate school, course, or instructor;

(d) providing a history of a license, registration, or certification;

- (e) producing a certified copy of an official document, order, or other paper or transcript; and
- (f) other duties required by this chapter.
- (2) Notwithstanding Section 13-1-2, a fee collected under Subsection (1)(c) shall be deposited in the Real Estate Education, Research, and Recovery Fund.
- (3) If a person pays a fee or costs to the division with a negotiable instrument or other payment method that is not honored for payment:
  - (a) the transaction for which the payment is submitted is voidable by the division;
  - (b) the division may reverse the transaction if payment of the applicable fee or costs is not received in full; and
  - (c) the person's license, certification, or registration is automatically suspended:
    - (i) beginning the day on which the payment is due; and
    - (ii) ending the day on which payment is made in full.
- (4) (a) A fee under this chapter is in lieu of all other license fees or assessments that might otherwise be imposed or charged by the state or any of its political subdivisions upon, or as a condition of, the privilege of conducting the business regulated by this chapter, except that a political subdivision within the state may charge a business license fee on a principal broker if the principal broker maintains a place of business within the jurisdiction of the political subdivision.
- (b) Unless otherwise exempt, a licensee under this chapter is subject to the taxes imposed under Title 59, Revenue and Taxation.

Amended by Chapter 289, 2011 General Session

**61-2f-106. Severability.**

If a provision of this chapter, or the application of a provision to any person or circumstance, is held invalid, the remainder of this chapter shall be given effect without the invalid provision or application. The provisions of this chapter are severable.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-201. License required.**

- (1) Unless a person is licensed under this chapter, it is unlawful for the person to do the following with respect to real estate located in this state:
  - (a) engage in the business of a principal broker, associate broker, or sales agent;
  - (b) act in the capacity of a principal broker, associate broker, or sales agent;
  - (c) advertise or assume to act as a principal broker, associate broker, or a sales agent.
- (2) Except as provided in Section 61-2f-202, an individual is required to be licensed as a principal broker, associate broker, or a sales agent if the individual performs, offers to perform, or attempts to perform one act for valuable consideration of:
  - (a) buying, selling, leasing, managing, or exchanging real estate for another person; or

(b) offering for another person to buy, sell, lease, manage, or exchange real estate.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-202. Exempt persons and transactions.**

(1) (a) Except as provided in Subsection (1)(b), a license under this chapter is not required for:

(i) an individual who as owner or lessor performs an act described in Subsection 61-2f-102(18) with reference to real estate owned or leased by that individual;

(ii) a regular salaried employee of the owner or lessor of real estate who, with reference to nonresidential real estate owned or leased by the employer, performs an act described in Subsection 61-2f-102(18)(a) or (b);

(iii) a regular salaried employee of the owner of real estate who performs property management services with reference to real estate owned by the employer, except that the employee may only manage real estate for one employer;

(iv) an individual who performs property management services for the apartments at which that individual resides in exchange for free or reduced rent on that individual's apartment;

(v) a regular salaried employee of a condominium homeowners' association who manages real estate subject to the declaration of condominium that established the condominium homeowners' association, except that the employee may only manage real estate for one condominium homeowners' association; and

(vi) a regular salaried employee of a licensed property management company who performs support services, as prescribed by rule, for the property management company.

(b) Subsection (1)(a) does not exempt from licensing:

(i) an employee engaged in the sale of real estate regulated under:

(A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; or

(B) Title 57, Chapter 19, Timeshare and Camp Resort Act;

(ii) an employee engaged in the sale of cooperative interests regulated under Title 57, Chapter 23, Real Estate Cooperative Marketing Act; or

(iii) an individual whose interest as an owner or lessor is obtained by that individual or transferred to that individual for the purpose of evading the application of this chapter, and not for another legitimate business reason.

(2) A license under this chapter is not required for:

(a) an isolated transaction or service by an individual holding a duly executed power of attorney from a property owner;

(b) services rendered by an attorney admitted to practice law in this state in performing the attorney's duties as an attorney;

(c) a receiver, trustee in bankruptcy, administrator, executor, or an individual acting under order of a court;

(d) a trustee or employee of a trustee under a deed of trust or a will;

(e) a public utility, officer of a public utility, or regular salaried employee of a public utility, unless performance of an act described in Subsection 61-2f-102(18) is in connection with the sale, purchase, lease, or other disposition of real estate or

investment in real estate unrelated to the principal business activity of that public utility;

(f) a regular salaried employee or authorized agent working under the oversight of the Department of Transportation when performing an act on behalf of the Department of Transportation in connection with one or more of the following:

(i) the acquisition of real estate pursuant to Section 72-5-103;

(ii) the disposal of real estate pursuant to Section 72-5-111;

(iii) services that constitute property management; or

(iv) the leasing of real estate; and

(g) a regular salaried employee of a county, city, or town when performing an act on behalf of the county, city, or town:

(i) in accordance with:

(A) if a regular salaried employee of a city or town:

(I) Title 10, Utah Municipal Code; or

(II) Title 11, Cities, Counties, and Local Taxing Units; and

(B) if a regular salaried employee of a county:

(I) Title 11, Cities, Counties, and Local Taxing Units; and

(II) Title 17, Counties; and

(ii) in connection with one or more of the following:

(A) the acquisition of real estate, including by eminent domain;

(B) the disposal of real estate;

(C) services that constitute property management; or

(D) the leasing of real estate.

(3) A license under this chapter is not required for an individual registered to act as a broker-dealer, agent, or investment adviser under the Utah and federal securities laws in the sale or the offer for sale of real estate if:

(a) (i) the real estate is a necessary element of a "security" as that term is defined by the Securities Act of 1933 and the Securities Exchange Act of 1934; and

(ii) the security is registered for sale in accordance with:

(A) the Securities Act of 1933; or

(B) Title 61, Chapter 1, Utah Uniform Securities Act; or

(b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec. 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation D, Rule 506, 17 C.F.R. Sec. 230.506; and

(ii) the selling agent and the purchaser are not residents of this state.

Amended by Chapter 292, 2013 General Session

### **61-2f-203. Licensing requirements.**

(1) (a) (i) The division shall determine whether an applicant with a criminal history qualifies for licensure.

(ii) If the division, acting under Subsection (1)(a)(i), denies or restricts a license or places a license on probation, the applicant may petition the commission for de novo review of the application.

(b) Except as provided in Subsection (5), the commission shall determine all other qualifications and requirements of an applicant for:

(i) a principal broker license;

- (ii) an associate broker license; or
- (iii) a sales agent license.

(c) The division, with the concurrence of the commission, shall require and pass upon proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency of each applicant for an initial license or for renewal of an existing license.

(d) (i) The division, with the concurrence of the commission, shall require an applicant for:

(A) a sales agent license to complete an approved educational program consisting of the number of hours designated by rule made by the commission with the concurrence of the division, except that the rule may not require less than 120 hours; and

(B) an associate broker or a principal broker license to complete an approved educational program consisting of the number of hours designated by rule made by the commission with the concurrence of the division, except that the rule may not require less than 120 hours.

(ii) An hour required by this section means 50 minutes of instruction in each 60 minutes.

(iii) The maximum number of program hours available to an individual is eight hours per day.

(e) The division, with the concurrence of the commission, shall require the applicant to pass an examination approved by the commission covering:

(i) the fundamentals of:

- (A) the English language;
- (B) arithmetic;
- (C) bookkeeping; and
- (D) real estate principles and practices;

(ii) this chapter;

(iii) the rules established by the commission; and

(iv) any other aspect of Utah real estate license law considered appropriate.

(f) (i) Three years' full-time experience as a sales agent or its equivalent is required before an applicant may apply for, and secure a principal broker or associate broker license in this state.

(ii) The commission shall establish by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the criteria by which the commission will accept experience or special education in similar fields of business in lieu of the three years' experience.

(2) (a) The division, with the concurrence of the commission, may require an applicant to furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's reputation and competency as set forth by rule.

(b) The division shall require an applicant to provide the applicant's Social Security number, which is a private record under Subsection 63G-2-302(1)(i).

(3) (a) An individual who is not a resident of this state may be licensed in this state if the person complies with this chapter.

(b) An individual who is not a resident of this state may be licensed as an associate broker or sales agent in this state by:

- (i) complying with this chapter; and

(ii) being employed or engaged as an independent contractor by or on behalf of a principal broker who is licensed in this state, regardless of whether the principal broker is a resident of this state.

(4) (a) The division and commission shall treat an application to be relicensed of an applicant whose real estate license is revoked as an original application.

(b) In the case of an applicant for a new license as a principal broker or associate broker, the applicant is not entitled to credit for experience gained before the revocation of a real estate license.

(5) (a) Notwithstanding Subsection (1)(b), the commission may delegate to the division the authority to:

(i) review a class or category of applications for initial or renewed licenses;

(ii) determine whether an applicant meets the licensing criteria in Subsection (1);  
and

(iii) approve or deny a license application without concurrence by the commission.

(b) (i) If the commission delegates to the division the authority to approve or deny an application without concurrence by the commission and the division denies an application for licensure, the applicant who is denied licensure may petition the commission for de novo review of the application.

(ii) An applicant who is denied licensure pursuant to this Subsection (5) may seek agency review by the executive director only after the commission has reviewed the division's denial of the applicant's application.

Amended by Chapter 426, 2013 General Session

**61-2f-204. Licensing fees and procedures -- Renewal fees and procedures.**

(1) (a) Upon filing an application for an examination for a license under this chapter, the applicant shall pay a nonrefundable fee established in accordance with Section 63J-1-504 for admission to the examination.

(b) An applicant for a principal broker, associate broker, or sales agent license shall pay a nonrefundable fee as determined by the commission with the concurrence of the division under Section 63J-1-504 for issuance of an initial license or license renewal.

(c) A license issued under this Subsection (1) shall be issued for a period of not less than two years as determined by the division with the concurrence of the commission.

(d) (i) Any of the following applicants shall comply with this Subsection (1)(d):

(A) a new sales agent applicant;

(B) a principal broker applicant; or

(C) an associate broker applicant.

(ii) An applicant described in this Subsection (1)(d) shall:

(A) submit fingerprint cards in a form acceptable to the division at the time the license application is filed; and

(B) consent to a criminal background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application.

(iii) The division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for each applicant described in this Subsection (1)(d) through the national criminal history system or any successor system.

(iv) The applicant shall pay the cost of the criminal background check and the fingerprinting.

(v) Money paid to the division by an applicant for the cost of the criminal background check is nonlapsing.

(e) (i) A license issued under Subsection (1)(d) is conditional, pending completion of the criminal background check.

(ii) A license is immediately and automatically revoked if the criminal background check discloses the applicant fails to accurately disclose a criminal history involving:

(A) the real estate industry; or

(B) a felony conviction on the basis of an allegation of fraud, misrepresentation, or deceit.

(iii) If a criminal background check discloses that an applicant fails to accurately disclose a criminal history other than one described in Subsection (1)(e)(ii), the division:

(A) shall review the application; and

(B) in accordance with rules made by the division pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may:

(I) place a condition on a license;

(II) place a restriction on a license;

(III) revoke a license; or

(IV) refer the application to the commission for a decision.

(iv) A person whose conditional license is automatically revoked under Subsection (1)(e)(ii) or whose license is conditioned, restricted, or revoked under Subsection (1)(e)(iii) may have a hearing after the action is taken to challenge the action. The hearing shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(v) The director shall designate one of the following to act as the presiding officer in a hearing described in Subsection (1)(e)(iv):

(A) the division; or

(B) the division with the concurrence of the commission.

(vi) The decision on whether relief from an action under this Subsection (1)(e) will be granted shall be made by the presiding officer.

(vii) Relief from an automatic revocation under Subsection (1)(e)(ii) may be granted only if:

(A) the criminal history upon which the division based the revocation:

(I) did not occur; or

(II) is the criminal history of another person;

(B) (I) the revocation is based on a failure to accurately disclose a criminal history; and

(II) the applicant has a reasonable good faith belief at the time of application that there was no criminal history to be disclosed; or

(C) the division fails to follow the prescribed procedure for the revocation.

(viii) If a license is revoked or a revocation under this Subsection (1)(e) is upheld after a hearing, the individual may not apply for a new license until at least 12 months after the day on which the license is revoked.

(2) (a) (i) A license expires if it is not renewed on or before its expiration date.

(ii) As a condition of renewal, an active licensee shall demonstrate competence by completing 18 hours of continuing education within a two-year renewal period subject to rules made by the commission, with the concurrence of the division.

(iii) In making a rule described in Subsection (2)(c)(ii), the division and commission shall consider:

(A) evaluating continuing education on the basis of competency, rather than course time;

(B) allowing completion of courses in a significant variety of topic areas that the division and commission determine are valuable in assisting an individual licensed under this chapter to increase the individual's competency; and

(C) allowing completion of courses that will increase a licensee's professional competency in the area of practice of the licensee.

(iv) The division may award credit to a licensee for a continuing education requirement of this Subsection (2)(a) for a reasonable period of time upon a finding of reasonable cause, including:

(A) military service; or

(B) if an individual is elected or appointed to government service, the individual's government service during which the individual spends a substantial time addressing real estate issues subject to conditions established by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) For a period of 30 days after the day on which a license expires, the license may be reinstated:

(i) if the applicant's license was inactive on the day on which the applicant's license expired, upon payment of a renewal fee and a late fee determined by the commission with the concurrence of the division under Section 63J-1-504; or

(ii) if the applicant's license was active on the day on which the applicant's license expired, upon payment of a renewal fee and a late fee determined by the commission with the concurrence of the division under Section 63J-1-504, and providing proof acceptable to the division and the commission of the licensee having:

(A) completed the hours of education required by Subsection (2)(a); or

(B) demonstrated competence as required under Subsection (2)(a).

(c) After the 30-day period described in Subsection (2)(b), and until six months after the day on which an active or inactive license expires, the license may be reinstated by:

(i) paying a renewal fee and a late fee determined by the commission with the concurrence of the division under Section 63J-1-504;

(ii) providing to the division proof of satisfactory completion of six hours of continuing education:

(A) in addition to the requirements for a timely renewal; and

(B) on a subject determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(iii) providing proof acceptable to the division and the commission of the



licensee having:

- (A) completed the hours of education required under Subsection (2)(a); or
- (B) demonstrated competence as required under Subsection (2)(a).

(d) After the six-month period described in Subsection (2)(c), and until one year after the day on which an active or inactive license expires, the license may be reinstated by:

(i) paying a renewal fee and a late fee determined by the commission with the concurrence of the division under Section 63J-1-504;

(ii) providing to the division proof of satisfactory completion of 24 hours of continuing education:

(A) in addition to the requirements for a timely renewal; and

(B) on a subject determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(iii) providing proof acceptable to the division and the commission of the licensee having:

(A) completed the hours of education required by Subsection (2)(a); or

(B) demonstrated competence as required under Subsection (2)(a).

(e) The division shall relicense a person who does not renew that person's license within one year as prescribed for an original application.

(f) Notwithstanding Subsection (2)(a), the division may extend the term of a license that would expire under Subsection (2)(a) except for the extension if:

(i) (A) the person complies with the requirements of this section to renew the license; and

(B) the renewal application remains pending at the time of the extension; or

(ii) at the time of the extension, there is pending a disciplinary action under this chapter.

(3) (a) As a condition for the activation of an inactive license that was in an inactive status at the time of the licensee's most recent renewal, the licensee shall supply the division with proof of:

(i) successful completion of the respective sales agent or principal broker licensing examination within six months before applying to activate the license; or

(ii) the successful completion of the hours of continuing education that the licensee would have been required to complete under Subsection (2)(a) if the license had been on active status at the time of the licensee's most recent renewal.

(b) The commission may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish by rule:

(i) the nature or type of continuing education required for reactivation of a license; and

(ii) how long before reactivation the continuing education must be completed.

Amended by Chapter 350, 2014 General Session

**61-2f-205. Form of license -- Display of license.**

(1) The division shall issue to a licensee a wall license that contains:

(a) the name and address of the licensee;

(b) the seal of the state; and

- (c) any other matter prescribed by the division.
- (2) The division shall send, by mail or email, the license described in Subsection (1) to the licensee at the mailing address or email address furnished by the licensee.
- (3) A principal broker shall keep the license of the principal broker and the license of any associate broker or sales agent affiliated with the principal broker in the office in which the licensee works to be made available on request.

Amended by Chapter 350, 2014 General Session

**61-2f-206. Registration of entity or branch office -- Certification of education providers and courses -- Specialized licenses.**

- (1) (a) An entity may not engage in an activity described in Section 61-2f-201, unless it is registered with the division.
- (b) To register with the division under this Subsection (1), an entity shall submit to the division:
  - (i) an application in a form required by the division;
  - (ii) evidence of an affiliation with a principal broker;
  - (iii) evidence that the entity is registered and in good standing with the Division of Corporations and Commercial Code; and
  - (iv) a registration fee established by the commission with the concurrence of the division under Section 63J-1-504.
- (c) The division may terminate an entity's registration if:
  - (i) the entity's registration with the Division of Corporations and Commercial Code has been expired for at least three years; and
  - (ii) the entity's license with the division has been inactive for at least three years.
- (2) (a) A principal broker shall register with the division each of the principal broker's branch offices.
- (b) To register a branch office with the division under this Subsection (2), a principal broker shall submit to the division:
  - (i) an application in a form required by the division; and
  - (ii) a registration fee established by the commission with the concurrence of the division under Section 63J-1-504.
- (3) (a) In accordance with rules made by the commission, the division shall certify:
  - (i) a real estate school;
  - (ii) a course provider; or
  - (iii) an instructor.
- (b) In accordance with rules made by the commission, and with the concurrence of the commission, the division shall certify a continuing education course that is required under this chapter.
- (4) (a) Except as provided by rule, a principal broker may not be responsible for more than one registered entity at the same time.
- (b) (i) In addition to issuing a principal broker license, associate broker license, or sales agent license authorizing the performance of an act set forth in Section 61-2f-201, the division may issue a specialized sales license or specialized property management license with the scope of practice limited to the specialty.

- (ii) An individual may hold a specialized license in addition to a license as a principal broker, associate broker, or a sales agent.
- (iii) The commission may adopt rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the administration of this Subsection (4), including:
  - (A) prelicensing and postlicensing education requirements;
  - (B) examination requirements;
  - (C) affiliation with real estate brokerages or property management companies;and
  - (D) other licensing procedures.

Amended by Chapter 292, 2013 General Session

**61-2f-207. Change of information -- Failure to notify.**

(1) An applicant, licensee, registrant, or certificate holder shall send the division a signed statement in the form required by the division notifying the division within 10 business days of any change of:

- (a) principal broker;
- (b) principal business location;
- (c) mailing address;
- (d) home street address;
- (e) an individual's name; or
- (f) business name.

(2) The division may charge a fee established by the commission with the concurrence of the division in accordance with Section 63J-1-504 for processing any notification of change submitted by an applicant, licensee, registrant, or certificate holder.

(3) (a) When providing the division a business location or home street address, a physical location or street address must be provided.

(b) When providing a mailing address, an applicant, licensee, registrant, or certificate holder may provide a post office box or other mail drop location.

(4) Failure to notify the division of a change described in Subsection (1) is separate grounds for disciplinary action against an applicant, licensee, registrant, or certificate holder.

(5) An applicant, licensee, registrant, or certificate holder is considered to have received any notification that has been sent to the last address furnished to the division by the applicant, licensee, registrant, or certificate holder.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-208. Surrender of license.**

(1) The division may, by written agreement, accept the voluntary surrender of a license issued under this chapter.

(2) Tender and acceptance of a voluntary surrender of a license under Subsection (1):

- (a) does not prevent the division from pursuing additional action, including disciplinary action, that relates to the surrendered license and is authorized by this

chapter or by rules made under this chapter; and

(b) terminates all rights and privileges associated with the license.

(3) A person may restore the rights and privileges described in Subsection (2)(b) only if the person reapplies for, and is granted, licensure in accordance with the requirements described in this chapter.

(4) Any documentation relating to the tender and acceptance of a voluntary surrender is a public record.

Enacted by Chapter 350, 2014 General Session

**61-2f-301. Reporting requirements.**

(1) A licensee shall notify the division of the following by sending the division a signed statement within 10 business days of:

(a) a conviction of, or the entry of a plea in abeyance to:

(i) a felony; or

(ii) a misdemeanor involving financial services or a financial services-related business, fraud, a false statement or omission, theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, or extortion;

(b) the potential resolution of a felony or of a misdemeanor described in Subsection (1)(a)(ii) by:

(i) a diversion agreement; or

(ii) another agreement under which a criminal charge is held in suspense for a period of time;

(c) the filing of a personal or brokerage bankruptcy, if the licensee is a principal broker;

(d) the suspension, revocation, surrender, cancellation, or denial of a license or registration of the licensee that is necessary to engage in an occupation or profession, regardless of whether the license or registration is issued by this state or another jurisdiction; or

(e) the entry of a cease and desist order or a temporary or permanent injunction:

(i) against the licensee by a court or administrative agency; and

(ii) on the basis of:

(A) conduct or a practice involving the business of real estate; or

(B) conduct involving fraud, misrepresentation, or deceit.

(2) The commission, with the concurrence of the director, shall enforce the reporting requirement under this section pursuant to Section 61-2f-404.

Amended by Chapter 166, 2012 General Session

**61-2f-302. Affiliation with a principal broker.**

(1) An individual who is not a principal broker may not engage in an act described in Section 61-2f-201 unless the individual is affiliated with a principal broker as:

(a) an associate broker; or

(b) a sales agent.

(2) (a) An inactive associate broker or sales agent may not conduct a real estate

transaction until the inactive associate broker or sales agent becomes affiliated with a principal broker and submits the required documentation to the division.

(b) An inactive principal broker may not conduct a real estate transaction until the principal broker's license is activated with the division.

(3) A sales agent or associate broker may not affiliate with more than one principal broker at the same time.

(4) An individual may not be a principal broker of an entity and a sales agent or associate broker for a different entity at the same time.

(5) An owner, purchaser, lessor, or lessee who engages the services of a principal broker may designate which sales agents or associate brokers affiliated with that principal broker will also represent that owner, purchaser, lessor, or lessee in the purchase, sale, lease, or exchange of real estate, or in exercising an option relating to real estate.

Amended by Chapter 184, 2010 General Session

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-303. Sales agents or associate broker -- Affiliated with principal broker as independent contractors or employees -- Presumption.**

A sales agent or associate broker may be affiliated with a principal broker either as an independent contractor or as an employee. The relationship between sales agent or associate broker and principal broker is presumed to be an independent contractor relationship unless there is clear and convincing evidence that the relationship was intended by the parties to be an employer employee relationship.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-304. Termination of associate broker or sales agent by principal broker -- Notice.**

(1) If a principal broker terminates an associate broker or sales agent, the principal broker shall by no later than three days from the day on which the principal broker terminates the associate broker or sales agent:

(a) provide the division a signed statement notifying the division of the termination; and

(b) send to the last-known residence address of that associate broker or sales agent notice that the principal broker has notified the division of the termination of the associate broker or sales agent.

(2) An associate broker or sales agent may not perform any act under this chapter, directly or indirectly, from and after the date of receipt of the termination notice by the division until the day on which the associate broker or sales agent is affiliated with a principal broker.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-305. Restrictions on commissions.**

(1) Except as provided in Subsection (2), an associate broker or sales agent

may not accept valuable consideration for the performance of an act specified in this chapter from a person except the principal broker with whom the associate broker or sales agent is affiliated.

(2) An associate broker or sales agent may receive valuable consideration for the performance of an act specified in this chapter from a person other than the principal broker with whom the associate broker or sales agent is affiliated if:

(a) the valuable consideration is paid with a payment instrument prepared by a title insurance agent;

(b) the title insurance agent provides the payment instrument to the principal broker;

(c) the title insurance agent complies with the written instructions of the principal broker:

(i) in preparing the payment instrument; and

(ii) delivering the payment instrument to the principal broker; and

(d) the principal broker directly delivers the payment instrument to the associate broker or sales agent.

(3) The commission, with the concurrence of the division, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) defining what constitutes a "payment instrument" for purposes of this section; or

(b) the form and contents of the written instructions required by Subsection (2), including providing that the contents of the written instructions indicate that the payment instrument process is an assignment to the associate broker or sales agent by the principal broker of a portion of the consideration the title insurance agent is obligated to pay the principal broker.

Enacted by Chapter 379, 2010 General Session

**61-2f-306. Rights and privileges of real estate licensees to fill out forms or documents.**

(1) Except as provided in Subsection (2), a real estate licensee may fill out only those legal forms approved by the commission and the attorney general, and those forms provided by statute.

(2) (a) (i) A principal broker may fill out any documents associated with the closing of a real estate transaction.

(ii) A branch broker or associate broker may fill out any documents associated with the closing of a real estate transaction if designated to fill out the documents by the principal broker with whom the branch broker or associate broker is affiliated.

(b) A real estate licensee may fill out real estate forms prepared by legal counsel of the buyer, seller, lessor, or lessee.

(c) If the commission and the attorney general have not approved a specific form for the transaction, a principal broker, associate broker, or sales agent may fill out real estate forms prepared by any legal counsel, including legal counsel retained by the brokerage to develop these forms.

(3) The commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide a process for the approval of a legal form

under this section by the commission and the attorney general.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-307. Rulemaking required for offer or sale of an undivided fractionalized long-term estate -- Disclosures -- Management agreement.**

(1) (a) A licensee or certificate holder under this chapter who sells or offers to sell an undivided fractionalized long-term estate shall comply with the disclosure requirements imposed by rules made by the commission under this section.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules as to the timing, form, and substance of disclosures required to be made by a licensee or certificate holder under this section.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules imposing requirements for a management agreement related to an undivided fractionalized long-term estate that makes the offer or sale of the undivided fractionalized long-term estate treated as a real estate transaction and not treated as an offer or sale of a security under Chapter 1, Utah Uniform Securities Act.

(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules establishing:

(a) the disclosures required in the sale or offer of an undivided fractionalized long-term estate that is subject to a master lease;

(b) requirements for the management of a master lease on an undivided fractionalized long-term estate; and

(c) the requirements on the structure of a master lease on an undivided fractionalized long-term estate.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-308. Brokerage agreements.**

(1) As used in this section:

(a) "Brokerage agreement" means a written agreement between a client and a principal broker:

(i) (A) to list for sale, lease, or exchange, real estate, an option on real estate, or an improvement on real estate; or

(B) for representation in the purchase, lease, or exchange of real estate, an option on real estate, or an improvement on real estate; and

(ii) that gives the principal broker the expectation of receiving valuable consideration in exchange for the principal broker's services.

(b) "Client" means a person who makes an exclusive brokerage agreement with a principal broker under Subsection (1)(d).

(c) "Closed" means that:

(i) the documents required to be executed under the contract are executed;

(ii) the money required to be paid by either party under the contract is paid in the form of collected or cleared funds;

(iii) the proceeds of any new loan are delivered by the lender to the seller; and

(iv) the applicable documents are recorded in the office of the county recorder for the county in which the real estate is located.

(d) "Exclusive brokerage agreement" means a brokerage agreement that gives the principal broker the sole right to act as the agent or representative of the client for the purchase, sale, lease, or exchange of real estate, an option on real estate, or an improvement on real estate.

(2) (a) Except as provided in Subsection (2)(b), a principal broker subject to an exclusive brokerage agreement shall:

(i) accept delivery of and present to the client offers and counteroffers to buy, lease, or exchange the client's real estate;

(ii) assist the client in developing, communicating, and presenting offers, counteroffers, and notices; and

(iii) answer any question the client has concerning:

(A) an offer;

(B) a counteroffer;

(C) a notice; and

(D) a contingency.

(b) A principal broker subject to an exclusive brokerage agreement need not comply with Subsection (2)(a) after:

(i) (A) an agreement for the sale, lease, or exchange of the real estate, option on real estate, or improvement on real estate is signed;

(B) the contingencies related to the sale, lease, or exchange are satisfied or waived; and

(C) the sale, lease, or exchange is closed; or

(ii) the exclusive brokerage agreement expires or terminates.

(3) A principal broker who violates this section is subject to Sections 61-2f-404 and 61-2f-405.

(4) (a) Subject to Subsection (4)(b), a principal broker who represents a buyer may directly contact a seller who is subject to a brokerage agreement or an exclusive brokerage agreement if:

(i) the seller's principal broker gives the buyer's principal broker written authorization; or

(ii) subject to Subsection (4)(c), the seller gives the buyer's principal broker written authorization.

(b) If a buyer's principal broker obtains a written authorization described in Subsection (4)(a), the buyer's principal broker may contact the seller directly to:

(i) discuss items related to a real estate transaction between the buyer and the seller;

(ii) provide the seller with blank state-approved forms; and

(iii) negotiate the terms of a real estate transaction between the buyer and the seller.

(c) A buyer's principal broker may not solicit from a seller a written authorization described in Subsection (4)(a)(ii).

(5) A principal broker who, in accordance with Subsection (4), engages in the conduct described in Subsection (4)(b) is not, by that conduct, representing that the principal broker is acting on behalf of both the buyer and the seller.



Amended by Chapter 350, 2014 General Session

**61-2f-401. Grounds for disciplinary action.**

The following acts are unlawful for a person licensed or required to be licensed under this chapter:

- (1) (a) making a substantial misrepresentation;
- (b) making an intentional misrepresentation;
- (c) pursuing a continued and flagrant course of misrepresentation;
- (d) making a false representation or promise through an agent, sales agent, advertising, or otherwise; or
- (e) making a false representation or promise of a character likely to influence, persuade, or induce;
- (2) acting for more than one party in a transaction without the informed consent of the parties;
- (3) (a) acting as an associate broker or sales agent while not affiliated with a principal broker;
- (b) representing or attempting to represent a principal broker other than the principal broker with whom the person is affiliated; or
- (c) representing as sales agent or having a contractual relationship similar to that of sales agent with a person other than a principal broker;
- (4) (a) failing, within a reasonable time, to account for or to remit money that belongs to another and comes into the person's possession;
- (b) commingling money described in Subsection (4)(a) with the person's own money; or
- (c) diverting money described in Subsection (4)(a) from the purpose for which the money is received;
- (5) paying or offering to pay valuable consideration, as defined by the commission, to a person not licensed under this chapter, except that valuable consideration may be shared:
  - (a) with a principal broker of another jurisdiction; or
  - (b) as provided under:
    - (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;
    - (ii) Title 16, Chapter 11, Professional Corporation Act; or
    - (iii) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405;
- (6) being incompetent to act as a principal broker, associate broker, or sales agent in such manner as to safeguard the interests of the public;
- (7) failing to voluntarily furnish a copy of a document to the parties before and after the execution of a document;
- (8) failing to keep and make available for inspection by the division a record of each transaction, including:
  - (a) the names of buyers and sellers or lessees and lessors;
  - (b) the identification of real estate;
  - (c) the sale or rental price;

- (d) money received in trust;
  - (e) agreements or instructions from buyers and sellers or lessees and lessors;
- and
- (f) any other information required by rule;
  - (9) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether the purchase, sale, or rental is made for that person or for an undisclosed principal;
  - (10) being convicted of a criminal offense involving moral turpitude within five years of the most recent application:
    - (a) regardless of whether the criminal offense is related to real estate; and
    - (b) including:
      - (i) a conviction based upon a plea of nolo contendere; or
      - (ii) a plea held in abeyance to a criminal offense involving moral turpitude;
  - (11) advertising the availability of real estate or the services of a licensee in a false, misleading, or deceptive manner;
  - (12) in the case of a principal broker or a licensee who is a branch manager, failing to exercise reasonable supervision over the activities of the principal broker's or branch manager's licensed or unlicensed staff;
  - (13) violating or disregarding:
    - (a) this chapter;
    - (b) an order of the commission; or
    - (c) the rules adopted by the commission and the division;
  - (14) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real estate transaction;
  - (15) any other conduct which constitutes dishonest dealing;
  - (16) unprofessional conduct as defined by statute or rule;
  - (17) having one of the following suspended, revoked, surrendered, or cancelled on the basis of misconduct in a professional capacity that relates to character, honesty, integrity, or truthfulness:
    - (a) a real estate license, registration, or certificate issued by another jurisdiction;or
    - (b) another license, registration, or certificate to engage in an occupation or profession issued by this state or another jurisdiction;
  - (18) failing to respond to a request by the division in an investigation authorized under this chapter, including:
    - (a) failing to respond to a subpoena;
    - (b) withholding evidence; or
    - (c) failing to produce documents or records;
  - (19) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
    - (a) providing a title insurance product or service without the approval required by Section 31A-2-405; or
    - (b) knowingly providing false or misleading information in the statement required by Subsection 31A-2-405(2);
  - (20) violating an independent contractor agreement between a principal broker and a sales agent or associate broker as evidenced by a final judgment of a court; or
  - (21) (a) engaging in an act of loan modification assistance that requires

licensure as a mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing Act, without being licensed under that chapter;

(b) engaging in an act of foreclosure rescue without entering into a written agreement specifying what one or more acts of foreclosure rescue will be completed;

(c) inducing a person who is at risk of foreclosure to hire the licensee to engage in an act of foreclosure rescue by:

(i) suggesting to the person that the licensee has a special relationship with the person's lender or loan servicer; or

(ii) falsely representing or advertising that the licensee is acting on behalf of:

(A) a government agency;

(B) the person's lender or loan servicer; or

(C) a nonprofit or charitable institution; or

(d) recommending or participating in a foreclosure rescue that requires a person to:

(i) transfer title to real estate to the licensee or to a third-party with whom the licensee has a business relationship or financial interest;

(ii) make a mortgage payment to a person other than the person's loan servicer;

or

(iii) refrain from contacting the person's:

(A) lender;

(B) loan servicer;

(C) attorney;

(D) credit counselor; or

(E) housing counselor.

Amended by Chapter 412, 2013 General Session

#### **61-2f-402. Investigations.**

(1) The division may make an investigation within or outside of this state as the division considers necessary to determine whether a person has violated, is violating, or is about to violate this chapter or any rule or order under this chapter.

(2) To aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter, the division may require or permit a person to file a statement in writing, under oath or otherwise as to the facts and circumstances concerning the matter to be investigated.

(3) For the purpose of the investigation described in Subsection (1), the division or an employee designated by the division may:

(a) administer an oath or affirmation;

(b) subpoena witnesses and evidence;

(c) take evidence;

(d) require the production of a book, paper, contract, record, other document, or information relevant to the investigation; and

(e) serve a subpoena by certified mail.

(4) (a) If a person is found to have violated this chapter or a rule made under this chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract, document, or record required under this chapter, including the costs

incurred to copy an electronic book, paper, contract, document, or record in a universally readable format.

(b) If a person fails to pay the costs described in Subsection (4)(a) when due, the person's license, certification, or registration is automatically suspended:

- (i) beginning the day on which the payment of costs is due; and
- (ii) ending the day on which the costs are paid.

(5) (a) Except as provided in Subsection (5)(b), the division shall commence a disciplinary action under this chapter no later than the earlier of the following:

- (i) four years after the day on which the violation is reported to the division; or
- (ii) 10 years after the day on which the violation occurred.

(b) The division may commence a disciplinary action under this chapter after the time period described in Subsection (5)(a) expires if:

(i) (A) the disciplinary action is in response to a civil or criminal judgment or settlement; and

(B) the division initiates the disciplinary action no later than one year after the day on which the judgment is issued or the settlement is final; or

(ii) the division and the person subject to a disciplinary action enter into a written stipulation to extend the time period described in Subsection (5)(a).

Amended by Chapter 350, 2014 General Session

**61-2f-403. Mishandling of trust money.**

(1) The division may audit principal brokers' trust accounts or other accounts in which a licensee maintains trust money under this chapter. If the division's audit shows, in the opinion of the division, gross mismanagement, commingling, or misuse of money, the division, with the concurrence of the commission, may order a complete audit of the account by a certified public accountant at the licensee's expense, or take other action in accordance with Section 61-2f-404.

(2) The licensee may obtain agency review by the executive director or judicial review of any division order.

(3) (a) If it appears that a person has grossly mismanaged, commingled, or otherwise misused trust money, the division, with or without prior administrative proceedings, may bring an action:

(i) in the district court of the district where:

- (A) the person resides;
- (B) the person maintains a place of business; or
- (C) the act or practice occurred or is about to occur; and

(ii) to enjoin the act or practice and to enforce compliance with this chapter or any rule or order under this chapter.

(b) Upon a proper showing, a court shall grant injunctive relief or a temporary restraining order, and may appoint a receiver or conservator. The division is not required to post a bond in any court proceeding.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-404. Disciplinary action -- Judicial review.**

(1) (a) On the basis of a violation of this chapter, the commission with the concurrence of the director, may issue an order:

- (i) imposing an educational requirement;
- (ii) imposing a civil penalty not to exceed the greater of:
  - (A) \$5,000 for each violation; or
  - (B) the amount of any gain or economic benefit derived from each violation;
- (iii) taking any of the following actions related to a license, registration, or

certificate:

- (A) revoking;
- (B) suspending;
- (C) placing on probation;
- (D) denying the renewal, reinstatement, or application for an original license, registration, or certificate; or
- (E) in the case of denial or revocation of a license, registration, or certificate, setting a waiting period for an applicant to apply for a license, registration, or certificate under this title;
- (iv) issuing a cease and desist order;
- (v) modifying an action described in Subsections (1)(a)(i) through (iv) if the commission finds that the person complies with court ordered restitution; or
- (vi) doing any combination of Subsections (1)(a)(i) through (v).

(b) (i) If the commission with the concurrence of the director issues an order that orders a fine or educational requirements as part of a disciplinary action against a person, including a stipulation and order, the commission shall state in the order the deadline by which the person shall comply with the fine or educational requirements.

(ii) If a person fails to comply by the stated deadline:

- (A) the person's license, registration, or certificate is automatically suspended:
  - (I) beginning the day specified in the order as the deadline for compliance; and
  - (II) ending the day on which the person complies in full with the order; and
- (B) if the person fails to pay a fine required by an order, the division may begin a collection process:

(I) established by the division, with the concurrence of the commission, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(II) subject to Title 63A, Chapter 3, Part 5, Office of State Debt Collection.

(c) If a licensee is an active sales agent or active associate broker, the division shall inform the principal broker with whom the licensee is affiliated of the charge and of the time and place of any hearing.

(2) (a) An applicant, certificate holder, licensee, registrant, or person aggrieved, including the complainant, may obtain agency review by the executive director and judicial review of any adverse ruling, order, or decision of the division.

(b) If an applicant, certificate holder, registrant, or licensee prevails in the appeal and the court finds that the state action was undertaken without substantial justification, the court may award reasonable litigation expenses to the applicant, certificate holder, registrant, or licensee as provided under Title 78B, Chapter 8, Part 5, Small Business Equal Access to Justice Act.

(c) (i) An order, ruling, or decision of the division shall take effect and become

operative 30 days after the service of the order, ruling, or decision unless otherwise provided in the order.

(ii) If an appeal is taken by a licensee, registrant, or certificate holder, the division may stay enforcement of an order, ruling, or decision in accordance with Section 63G-4-405.

(iii) An appeal is governed by the Utah Rules of Appellate Procedure.

(3) The commission and the director shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative proceeding.

Amended by Chapter 369, 2012 General Session

**61-2f-405. Criminal penalties for violation of chapter -- Other penalties.**

(1) (a) An individual required to be licensed under this chapter who violates this chapter, in addition to being subject to a license sanction or a fine ordered by the commission, is, upon conviction of a first violation, guilty of a class A misdemeanor.

(b) For a conviction under this Subsection (1), imprisonment shall be for a term not to exceed six months.

(2) (a) Upon conviction of a second or subsequent violation, an individual is guilty of a third degree felony.

(b) Imprisonment for a conviction under this Subsection (2)(a) shall be for a term not to exceed two years.

(3) An officer or agent of a corporation, a member or agent of a partnership or association, or an individual in a similar position of another type of entity who personally participates in or is an accessory to any violation of this chapter by the entity is subject to the penalties prescribed for an individual.

(4) If a person receives money or its equivalent, as commission, compensation, or profit by or in consequence of a violation of this chapter, that person is liable for an additional penalty of not less than the amount of the money received and not more than three times the amount of money received, as may be determined by the court. This penalty may be sued for in any court of competent jurisdiction, and recovered by any person aggrieved for the person's own use and benefit.

(5) A fine imposed by the commission and the director under this chapter shall, notwithstanding Section 13-1-2, be deposited into the Real Estate Education, Research, and Recovery Fund to be used in a manner consistent with the requirements of Part 5, Real Estate Education, Research, and Recovery Fund Act.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-406. Grounds for revocation of principal broker's license.**

(1) An unlawful act or violation of this chapter committed by a person listed in Subsection (2) is cause for:

(a) the revocation, suspension, or probation of a principal broker's license; or

(b) the imposition of a fine against the principal broker in an amount not to exceed \$5,000 per violation.

(2) Subsection (1) applies to an act or violation by any of the following:

- (a) a sales agent or associate broker employed by a principal broker;
- (b) a sales agent or associate broker engaged as an independent contractor by or on behalf of a principal broker; or
- (c) an employee, officer, or member of a principal broker.

Amended by Chapter 350, 2014 General Session

**61-2f-407. Remedies and action for violations.**

(1) (a) The director shall issue and serve upon a person an order directing that person to cease and desist from an act if:

- (i) the director has reason to believe that the person has been engaging, is about to engage, or is engaging in the act constituting a violation of this chapter; and
- (ii) it appears to the director that it would be in the public interest to stop the act.

(b) Within 10 days after receiving the order, the person upon whom the order is served may request a hearing.

(c) Pending a hearing requested under Subsection (1)(b), a cease and desist order shall remain in effect.

(d) If a request for a hearing is made, the division shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(2) (a) After a hearing requested under Subsection (1), if the commission and the director agree that an act of the person violates this chapter, the director:

(i) shall issue an order making the order issued under Subsection (1) permanent; and

(ii) may impose another disciplinary action under Section 61-2f-404.

(b) The director shall file suit in the name of the Department of Commerce and the Division of Real Estate, in the district court in the county in which an act described in Subsection (1) occurs or where the person resides or carries on business, to enjoin and restrain the person from violating this chapter if:

(i) (A) a hearing is not requested under Subsection (1); and

(B) the person fails to cease the act described in Subsection (1); or

(ii) after discontinuing the act described in Subsection (1), the person again commences the act.

(c) A district court of this state has jurisdiction of an action brought under this section.

(d) Upon a proper showing in an action brought under this section or upon a conviction under Section 76-6-1203, the court may:

(i) issue a permanent or temporary, prohibitory or mandatory injunction;

(ii) issue a restraining order or writ of mandamus;

(iii) enter a declaratory judgment;

(iv) appoint a receiver or conservator for the defendant or the defendant's assets;

(v) order disgorgement;

(vi) order rescission;

(vii) impose a civil penalty not to exceed the greater of:

(A) \$5,000 for each violation; or

(B) the amount of any gain or economic benefit derived from a violation; and

(viii) enter any other relief the court considers just.

(e) The court may not require the division to post a bond in an action brought under this Subsection (2).

(3) A license, certificate, or registration issued by the division to any person convicted of a violation of Section 76-6-1203 is automatically revoked.

(4) A remedy or action provided in this section does not limit, interfere with, or prevent the prosecution of another remedy or action, including a criminal proceeding.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-408. Court-ordered discipline.**

The division shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this chapter if so ordered by a court.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-409. Actions for recovery of compensation restricted.**

(1) (a) A person may not bring or maintain an action in any court of this state for the recovery of a commission, fee, or compensation, for any act done or service rendered if the act or service is prohibited under this chapter.

(b) Except as provided in Subsection (1)(a), a person may bring or maintain an action in any court of this state for the recovery of a commission, fee, or compensation if the person is:

(i) a principal broker;

(ii) an individual that was licensed as a principal broker at the time the act or service that is the subject of the lawsuit was performed; or

(iii) an entity that, under the records of the Division of Real Estate, is affiliated with a principal broker.

(2) (a) A sales agent or associate broker may not sue in that individual's own name for the recovery of a fee, commission, or compensation for services as a sales agent or associate broker unless the action is against the principal broker with whom the sales agent or associate broker is or was affiliated.

(b) An action for the recovery of a fee, commission, or other compensation may only be instituted and brought by the principal broker with whom a sales agent or associate broker is affiliated.

Amended by Chapter 292, 2013 General Session

**61-2f-410. Effect of expiration, revocation, or suspension -- Notice required.**

(1) (a) The revocation or suspension of a principal broker license automatically inactivates an associate broker license or a sales agent license that was issued based upon the licensee's affiliation with the principal broker whose license is revoked or suspended, pending a change of principal broker affiliation.

(b) If an individual's associate broker license or sales agent license becomes inactive under Subsection (1)(a), the individual may affiliate with another principal



broker licensed under this chapter.

(2) Before the day on which a suspension or revocation of a principal broker's license is effective, the principal broker shall notify, in writing, each licensee affiliated with the principal broker:

- (a) that the principal broker's license will be revoked or suspended;
- (b) of the day on which the revocation or suspension is effective; and
- (c) that the licensee's license will be inactive beginning on the day on which the principal broker's license is revoked or suspended.

(3) If a principal broker fails to timely renew the principal broker's license in accordance with this chapter, on the day on which the principal broker's license expires, the principal broker shall notify, in writing, each licensee affiliated with the principal broker:

- (a) that the principal broker's license is expired;
- (b) of the day on which the principal broker's license expired; and
- (c) that the licensee's license is inactive beginning on the day on which the principal broker's license expired.

Enacted by Chapter 350, 2014 General Session

**61-2f-501. Title.**

This part is known as the "Real Estate Education, Research, and Recovery Fund Act."

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-502. Definitions.**

For purposes of this part:

- (1) "Civil judgment" means a judgment in a civil action that:
  - (a) is awarded in an action brought against a real estate licensee on the basis of fraud, misrepresentation, or deceit in a real estate transaction; and
  - (b) awards actual damages.
- (2) "Criminal restitution judgment" means a judgment that, in accordance with the Utah Code of Criminal Procedure, orders criminal restitution to a person and against a real estate licensee for a criminal offense involving fraud, misrepresentation, or deceit in a real estate transaction.
- (3) "Final judgment" means one of the following judgments upon termination of the proceedings related to the judgment, including appeals:
  - (a) a civil judgment; or
  - (b) a criminal restitution judgment.
- (4) "Fund" means the Real Estate Education, Research, and Recovery Fund created in Section 61-2f-503.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-503. Real Estate Education, Research, and Recovery Fund.**

- (1) (a) There is created an expendable special revenue fund known as the "Real

Estate Education, Research, and Recovery Fund."

- (b) The actual interest earned on the fund shall be deposited into the fund.
- (2) The money in the fund includes:
  - (a) a fee imposed under Section 61-2f-505; and
  - (b) interest described in Subsection (1)(b).
- (3) The division shall administer the fund to:
  - (a) reimburse the public for damages caused in a real estate transaction by an individual licensed under this chapter; and
  - (b) in accordance with Section 61-2f-504:
    - (i) investigate violations of this chapter related to fraud, misrepresentation, or deceit; or
    - (ii) provide revenue for improving the real estate profession through education and research with the goal of making licensees more responsible to the public.
- (4) This part applies to damages caused by an individual licensee. Reimbursement may not be made for a final judgment against an entity.
- (5) At the beginning of each fiscal year, the division shall make available \$100,000 in the fund to satisfy final judgments rendered against a person licensed under this chapter.

Amended by Chapter 400, 2013 General Session

**61-2f-504. Use of money.**

- (1) Money accumulated in the fund in excess of \$100,000 shall be set aside and segregated to be used by the division to:
  - (a) investigate violations of this chapter related to fraud, misrepresentation, or deceit; and
  - (b) advance education and research in the field of real estate.
- (2) The division may use the money described in Subsection (1) only in a manner consistent with Subsection (1), including for a course:
  - (a) sponsored by the division;
  - (b) offered by the division in conjunction with any university or college in the state; or
  - (c) provided for by contracting for a particular research project in the field of real estate for the state.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-505. Additional license fee.**

- (1) An individual who applies for or renews a principal broker or associate broker license shall pay, in addition to the application or renewal fee, a reasonable annual fee of up to \$18, as determined by the division with the concurrence of the commission.
- (2) An individual who applies for or renews a sales agent license shall pay in addition to the application or renewal fee a reasonable annual fee of up to \$12, as determined by the division with the concurrence of the commission.
- (3) Notwithstanding Section 13-1-2, the additional fees under this section shall be paid into the fund.

**61-2f-506. Procedure to make a claim against the fund.**

- (1) A person may bring a claim against the fund if:
  - (a) the person obtains a final judgment;
  - (b) the person complies with the requirements under this part;
  - (c) the person is not complicit in the fraud, misrepresentation, or deceit that is the basis of the claim; and
  - (d) the final judgment that is the basis for the claim:
    - (i) has not been discharged in bankruptcy; and
    - (ii) when a bankruptcy proceeding is open or commenced during the pendency of the claim, the person obtains an order from the bankruptcy court declaring the final judgment and related debt to be nondischargeable.
- (2) (a) A person may not bring a claim against the fund for money owed under a civil judgment unless, within 10 business days of the day on which the person brings the civil action that results in the civil judgment, the person sends to the division a signed notification alleging fraud, misrepresentation, or deceit by a real estate licensee.
- (b) Within 30 days of the day on which the division receives a notice under Subsection (1), the division has an unconditional right to intervene in the civil action.
- (3) (a) After obtaining a final judgment, to file a claim against the fund, a person shall:
  - (i) file a verified petition in the court where the final judgment is entered seeking an order directing payment from the fund of an amount equal to the uncollected actual damages owed under the final judgment that are unpaid;
  - (ii) serve a copy of the verified petition described in Subsection (3)(a)(i) on the division; and
  - (iii) file a copy of the affidavit of service of the verified petition with the court.
- (b) Recovery from the fund may not include:
  - (i) punitive damages;
  - (ii) attorney fees;
  - (iii) interest; or
  - (iv) court costs.
- (c) Regardless of the number of claimants or parcels of real estate involved in a real estate transaction, the liability of the fund may not exceed:
  - (i) \$15,000 for a single transaction; and
  - (ii) \$50,000 for one licensee.
- (4) A court shall conduct a hearing on a petition filed under Subsection (3) as scheduled by the court.
- (5) Subject to Subsection (6), a court may order payment from the fund under this section only if the person who files the petition shows that the person:
  - (a) is not:
    - (i) in the case of a civil judgment, the spouse of the judgment debtor;
    - (ii) in the case of a criminal judgment, the spouse of the criminal defendant; or
    - (iii) a personal representative of an individual described in Subsection (5)(a)(i) or
  - (ii);

- (b) is in compliance with this chapter;
  - (c) is owed damages under a final judgment that:
    - (i) is issued by the court in the manner prescribed under this section; and
    - (ii) indicates the amount of the final judgment awarded;
  - (d) has proved the amount still owing on the final judgment on the date the petition is filed;
  - (e) (i) (A) has had a writ of execution issued upon the final judgment; and
    - (B) has received a return made by the officer executing the writ showing that no property subject to execution in satisfaction of the final judgment could be found; or
    - (ii) if execution is levied against the property of the judgment debtor or criminal defendant:
      - (A) has not realized an amount sufficient to satisfy the final judgment; and
      - (B) is owed a specific balance remaining on the final judgment after application of the amount realized;
  - (f) has made reasonable searches and inquiries to ascertain whether the judgment debtor or criminal defendant has any interest in property, real or personal, that may satisfy the final judgment; and
  - (g) has exercised reasonable diligence to secure payment of the final judgment from the assets of the judgment debtor or criminal defendant.
- (6) If a person satisfies the court under Subsection (5) that it is not practicable for the petitioner to comply with one or more of the requirements enumerated in Subsections (5)(e) through (g), the court may waive those requirements.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-507. Division authority to act upon receipt of petition.**

- (1) When the division is served a petition under Section 61-2f-506, the division may:
- (a) file an answer to the petition in the court;
  - (b) initiate a review proceeding conducted by the division; or
  - (c) appear in any proceeding in the name of the defendant to the action or on behalf of the fund.
- (2) The division may settle a claim against the fund if:
- (a) the person who brings the claim requests a settlement; and
  - (b) the court in which the petition is filed approves the settlement.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-508. Court determination and order.**

If a court determines that the fund should pay a claim under this part, in its order the court shall direct the division to pay from the fund that portion of the final judgment that is payable from the fund in accordance with Section 61-2f-506.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-509. Insufficient funds to satisfy judgments -- Procedure and**

**interest.**

If money deposited in the fund and allotted for satisfying a final judgment against a real estate licensee is insufficient to satisfy an order issued in accordance with Section 61-2f-508, when sufficient money is deposited in the fund, the division shall:

- (1) satisfy the unpaid claims in the order that the unpaid claims are originally filed; and
- (2) pay with the claim accumulated interest at the rate of 8% per annum.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-510. Division subrogated to claimant -- Authority to revoke license.**

(1) (a) If the division pays a claim against the fund in accordance with this chapter, the division is subrogated to the rights of the person who is paid the claim for the amounts paid out of the fund.

(b) The division shall deposit in the fund any amount and interest recovered by the division under this part.

(2) (a) The license of a real estate licensee for whom payment from the fund is made under this chapter shall be automatically revoked.

(b) A person whose real estate license is revoked under Subsection (2)(a) may not apply for a new license under this chapter until the person pays in full:

- (i) the amount paid by the fund for a claim that is based on a final judgment against the person; and
- (ii) interest at a rate determined by the division with the concurrence of the commission.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-511. Authority to take disciplinary action.**

(1) This part does not limit the authority of the director of the division to take disciplinary action against a real estate licensee for a violation of this chapter or of the rules of the commission and division.

(2) A real estate licensee's payment of all the obligations of the real estate licensee to the fund does not nullify or modify the effect of any other disciplinary proceeding brought pursuant to this chapter or the rules of the commission.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-512. Failure to comply with provisions constitutes a waiver.**

A person's failure to comply with this part constitutes a waiver of any right under this part.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2g-101. Title.**

This chapter is known as the "Real Estate Appraiser Licensing and Certification Act."

**61-2g-102. Definitions.**

(1) As used in this chapter:

(a) (i) "Appraisal" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of a specified interest in, or aspect of, identified real estate or identified real property.

(ii) An appraisal is classified by the nature of the assignment as a valuation appraisal, an analysis assignment, or a review assignment in accordance with the following definitions:

(A) "Analysis assignment" means an unbiased analysis, opinion, or conclusion that relates to the nature, quality, or utility of identified real estate or identified real property.

(B) "Review assignment" means an unbiased analysis, opinion, or conclusion that forms an opinion as to the adequacy and appropriateness of a valuation appraisal or an analysis assignment.

(C) "Valuation appraisal" means an unbiased analysis, opinion, or conclusion that estimates the value of an identified parcel of real estate or identified real property at a particular point in time.

(b) "Appraisal Foundation" means the Appraisal Foundation that was incorporated as an Illinois not-for-profit corporation on November 30, 1987.

(c) (i) "Appraisal report" means a communication, written or oral, of an appraisal.

(ii) An appraisal report is classified by the nature of the assignment as a valuation report, analysis report, or review report in accordance with the definitions provided in Subsection (1)(a)(ii).

(iii) The testimony of a person relating to the person's analyses, conclusions, or opinions concerning identified real estate or identified real property is considered to be an oral appraisal report.

(d) "Appraisal Qualification Board" means the Appraisal Qualification Board of the Appraisal Foundation.

(e) "Board" means the Real Estate Appraiser Licensing and Certification Board that is established in Section 61-2g-204.

(f) "Certified appraisal report" means a written or oral appraisal report that is certified by a state-certified general appraiser or state-certified residential appraiser.

(g) "Concurrence" means that the entities that are given a concurring role jointly agree to an action.

(h) (i) (A) "Consultation service" means an engagement to provide a real estate valuation service analysis, opinion, conclusion, or other service that does not fall within the definition of appraisal.

(B) "Consultation service" does not mean a valuation appraisal, analysis assignment, or review assignment.

(ii) Regardless of the intention of the client or employer, if a person prepares an unbiased analysis, opinion, or conclusion, the analysis, opinion, or conclusion is considered to be an appraisal and not a consultation service.

(i) "Contingent fee" means a fee or other form of compensation, payment of

which is dependent on or conditioned by:

(i) the reporting of a predetermined analysis, opinion, or conclusion by the person performing the analysis, opinion, or conclusion; or

(ii) achieving a result specified by the person requesting the analysis, opinion, or conclusion.

(j) "Credential" means a state-issued registration, license, or certification that allows an individual to perform any act or service that requires licensure or certification under this chapter.

(k) "Division" means the Division of Real Estate of the Department of Commerce.

(l) "Executive director" means the executive director of the Department of Commerce.

(m) "Federally related transaction" means a real estate related transaction that is required by federal law or by federal regulation to be supported by an appraisal prepared by:

(i) a state-licensed appraiser; or

(ii) a state-certified appraiser.

(n) "Real estate" means an identified parcel or tract of land including improvements if any.

(o) "Real estate appraisal activity" means the act or process of making an appraisal of real estate or real property and preparing an appraisal report.

(p) "Real estate related transaction" means:

(i) the sale, lease, purchase, investment in, or exchange of real property or an interest in real property, or the financing of such a transaction;

(ii) the refinancing of real property or an interest in real property; or

(iii) the use of real property or an interest in real property as security for a loan or investment, including mortgage-backed securities.

(q) "Real property" means one or more defined interests, benefits, or rights inherent in the ownership of real estate.

(r) "State-certified general appraiser" means a person who holds a current, valid certification as a state-certified general appraiser issued under this chapter.

(s) "State-certified residential appraiser" means a person who holds a current, valid certification as a state-certified residential real estate appraiser issued under this chapter.

(t) "State-licensed appraiser" means a person who holds a current, valid license as a state-licensed appraiser issued under this chapter.

(u) "Trainee" means an individual who:

(i) does not hold an appraiser license or appraiser certification issued under this chapter;

(ii) works under the direct supervision of a state-certified appraiser to earn experience for licensure; and

(iii) is registered as a trainee under this chapter.

(v) "Unbiased analysis, opinion, or conclusion" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of identified real estate or identified real property that is prepared by a person who is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested

third-party in rendering the analysis, opinion, or conclusion.

(2) (a) If a term not defined in this section is defined by rule, the term shall have the meaning established by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) If a term not defined in this section is not defined by rule, the term shall have the meaning commonly accepted in the business community.

Amended by Chapter 350, 2014 General Session

**61-2g-103. Other law unaffected.**

This chapter may not be considered to prohibit a person licensed, certified, or registered under this chapter from engaging in the practice of real estate appraising as a professional corporation or a limited liability company in accordance with:

(1) Title 16, Chapter 11, Professional Corporation Act; or

(2) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405.

Amended by Chapter 412, 2013 General Session

**61-2g-201. Duties and powers of division in general.**

(1) The division shall administer and enforce this chapter.

(2) The division has the following powers and duties:

(a) The division shall:

(i) receive an application for licensing, certification, or registration;

(ii) establish appropriate administrative procedures for the processing of an application for licensure, certification, or registration;

(iii) issue a license or certification to a qualified applicant pursuant to this chapter; and

(iv) register an individual who applies and qualifies for registration as a trainee under this chapter.

(b) The division shall hold public hearings under the direction of the board.

(c) The division may:

(i) solicit bids and enter into contracts with one or more educational testing services or organizations for the preparation of a bank of questions and answers; and

(ii) administer or contract for the administration of licensing and certification examinations as may be required to carry out the division's responsibilities under this chapter.

(d) The division shall provide administrative assistance to the board by providing to the board the facilities, equipment, supplies, and personnel that are required to enable the board to carry out the board's responsibilities under this chapter.

(e) The division shall assist the board in improving the quality of the continuing education available to a person licensed, certified, or registered under this chapter.

(f) The division shall assist the board with respect to the proper interpretation or explanation of the Uniform Standards of Professional Appraisal Practice as required by Section 61-2g-403 when an interpretation or explanation becomes necessary in the



enforcement of this chapter.

(g) The division may:

(i) promote research and conduct studies relating to the profession of real estate appraising; and

(ii) sponsor real estate appraisal educational activities.

(h) The division shall adopt, with the concurrence of the board, rules for the administration of this chapter pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that are not inconsistent with this chapter or the constitution and laws of this state or of the United States.

(i) The division shall employ an appropriate staff to investigate allegations that a person required to be licensed, certified, or registered under this chapter fails to comply with this chapter.

(j) The division may employ other professional, clerical, and technical staff as may be necessary to properly administer the work of the division under this chapter.

(k) (i) Upon request, the division shall make available, either directly or through a third-party, a list of the names and addresses of the persons licensed, registered, or certified by the division under this chapter.

(ii) A person who requests a list under this Subsection (2)(k) shall pay the costs incurred by the division to make the list available.

(3) (a) If the conditions of Subsection (3)(b) are met, the division is immune from any civil action or criminal prosecution for initiating or assisting in a lawful investigation of an act of, or participating in a disciplinary proceeding concerning a person required to be licensed, certified, or registered pursuant to this chapter.

(b) This Subsection (3) applies if the division takes the action:

(i) without malicious intent; and

(ii) in the reasonable belief that the action is taken pursuant to the powers and duties vested in the division under this chapter.

Amended by Chapter 166, 2012 General Session

**61-2g-202. Division service fees -- Federal registry fees.**

(1) The division, with the concurrence of the board, shall establish and collect fees in accordance with Section 63J-1-504 for its services under this chapter.

(2) The division shall collect the annual registry fee established by the Federal Financial Institutions Examinations Council from those certificate holders who seek to perform appraisals in federally related transactions. The division shall transmit the fees to the federal Appraisal Subcommittee at least annually.

(3) If a person pays a fee or costs to the division with a negotiable instrument or any other payment method that is not honored:

(a) the transaction for which the payment is submitted is voidable by the division;

(b) the division may reverse the transaction if payment of the applicable fee or costs is not received in full; and

(c) the person's license, certification, or registration is automatically suspended:

(i) beginning the day on which the payment is due; and

(ii) ending the day on which payment is made in full.

Renumbered and Amended by Chapter 289, 2011 General Session

**61-2g-203. Division to publish roster of appraisers.**

(1) The division shall prepare and issue at least once each calendar year a roster of appraisers containing the information required by the Federal Financial Institutions Examination Council. The division shall transmit the roster to the Federal Financial Institutions Examinations Council at least annually.

(2) The division may, upon payment of a fee established by the division in accordance with Section 63J-1-504, issue to a person a verified history of a person:

- (a) licensed, certified, or registered under this chapter; or
- (b) previously registered, licensed, or certified under this chapter.

Renumbered and Amended by Chapter 289, 2011 General Session

**61-2g-204. Real Estate Appraiser Licensing and Certification Board.**

(1) (a) There is established a Real Estate Appraiser Licensing and Certification Board that consists of five regular members as follows:

- (i) one state-licensed or state-certified appraiser who may be either a residential or general licensee or certificate holder;
- (ii) one state-certified residential appraiser;
- (iii) one state-certified general appraiser;
- (iv) one member who is certified as either a state-certified residential appraiser or a state-certified general appraiser; and
- (v) one member of the general public.

(b) A state-licensed or state-certified appraiser may be appointed as an alternate member of the board.

(c) The governor shall appoint all members of the board with the consent of the Senate.

(2) (a) Except as required by Subsection (2)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term beginning on July 1.

(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) Upon the expiration of a member's term, a member of the board shall continue to hold office until the appointment and qualification of the member's successor.

(d) A person may not serve as a member of the board for more than two consecutive terms.

(3) (a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(b) The governor may remove a member for cause.

(4) The public member of the board may not be licensed or certified under this chapter.

(5) The board shall meet at least quarterly to conduct its business. The division shall give public notice of a board meeting.

(6) The members of the board shall elect a chair annually from among the members to preside at board meetings.

(7) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(8) (a) Three members of the board shall constitute a quorum for the transaction of business.

(b) If a quorum of members is unavailable for any meeting, the alternate member of the board, if any, shall serve as a regular member of the board for that meeting if with the presence of the alternate member a quorum is present at the meeting.

Renumbered and Amended by Chapter 289, 2011 General Session

**61-2g-205. Duties of board.**

(1) (a) The board shall provide technical assistance to the division relating to real estate appraisal standards and real estate appraiser qualifications.

(b) The board has the powers and duties listed in this section.

(2) The board shall:

(a) determine the experience and education requirements appropriate for a person licensed under this chapter;

(b) determine the experience and education requirements appropriate for a person certified under this chapter:

(i) in compliance with the minimum requirements of Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

(ii) consistent with the intent of this chapter;

(c) determine the appraisal related acts that may be performed by:

(i) a trainee on the basis of the trainee's education and experience;

(ii) clerical staff; and

(iii) a person who:

(A) does not hold a license or certification; and

(B) assists an appraiser licensed or certified under this chapter in providing appraisal services or consultation services;

(d) determine the procedures for a trainee to register and to renew a registration with the division; and

(e) develop one or more programs to upgrade and improve the experience, education, and examinations as required under this chapter.

(3) The experience and education requirements determined by the board for a person licensed or certified under this chapter shall meet or exceed the minimum criteria established by the Appraisal Qualification Board.

(4) The board shall:

(a) determine the continuing education requirements appropriate for the renewal of a license, certification, or registration issued under this chapter that meet or exceed the minimum criteria established by the Appraisal Qualification Board;

(b) develop one or more programs to upgrade and improve continuing education; and

(c) recommend to the division one or more available continuing education courses that meet the requirements of this chapter.

(5) (a) The board shall consider the proper interpretation or explanation of the Uniform Standards of Professional Appraisal Practice as required by Section 61-2g-403 when:

(i) an interpretation or explanation is necessary in the enforcement of this chapter; and

(ii) the Appraisal Standards Board of the Appraisal Foundation has not issued an interpretation or explanation.

(b) If the conditions of Subsection (5)(a) are met, the board shall recommend to the division the appropriate interpretation or explanation that the division should adopt as a rule under this chapter.

(c) The board may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and Section 61-2g-403, and with the concurrence of the division, provide for an exemption from a provision of the Uniform Standards of Professional Appraisal Practice for an activity engaged in on behalf of a governmental entity.

(6) (a) The board shall conduct an administrative hearing, not delegated by the board to an administrative law judge, in connection with a disciplinary proceeding under Section 61-2g-504 concerning:

(i) a person required to be licensed, certified, or registered under this chapter; and

(ii) the person's failure to comply with this chapter and the Uniform Standards of Professional Appraisal Practice as adopted under Section 61-2g-403.

(b) The board, with the concurrence of the division, shall issue in an administrative hearing a decision that contains findings of fact and conclusions of law.

(c) When a determination is made that a person required to be licensed, certified, or registered under this chapter has violated this chapter, the division shall implement disciplinary action determined through concurrence of the board and the division.

(7) A member of the board is immune from a civil action or criminal prosecution for a disciplinary proceeding concerning a person required to be registered, licensed, certified, or approved as an expert under this chapter if the action is taken without malicious intent and in the reasonable belief that the action taken was taken pursuant to the powers and duties vested in a member of the board under this chapter.

(8) (a) The board shall require and pass upon proof necessary to determine the honesty, competency, integrity, truthfulness, and general fitness to command the confidence of the community of an applicant for:

(i) original licensure, certification, or registration; and

(ii) renewal licensure, certification, or registration.

(b) The board may delegate to the division the authority to:

- (i) review a class or category of applications for an original or renewed license, certification, or registration;
  - (ii) determine whether an applicant meets the qualifications for licensure, certification, or registration;
  - (iii) conduct any necessary hearing on an application for an original or renewed license, certification, or registration; and
  - (iv) approve or deny an application for an original or renewed license, certification, or registration.
- (c) Except as provided in Subsections (8)(d) and (e), and in accordance with Title 63G, Chapter 4, Administrative Procedures Act, an applicant who is denied licensure, certification, or registration under this chapter may submit a request for agency review to the executive director of the division within 30 days after the day on which the board issues the order denying the applicant's application.
- (d) If the board delegates to the division the authority to approve or deny an application without the concurrence of the board under Subsection (8)(b), and the division denies an application for licensure, certification, or registration, the applicant may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, petition the board for a de novo review of the application within 30 days after the day on which the division issues the order denying the applicant's application.
- (e) If the board denies an applicant's application for licensure, certification, or registration after a de novo review under Subsection (8)(d), the applicant may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, petition the executive director for review of the board's denial within 30 days after the day on which the board issues the order denying the applicant's application.

Amended by Chapter 350, 2014 General Session

**61-2g-301. License or certification required.**

- (1) Except as provided in Subsection (2), it is unlawful for a person to prepare, for valuable consideration, an appraisal, an appraisal report, a certified appraisal report, or perform a consultation service relating to real estate or real property in this state without first being licensed or certified in accordance with this chapter.
- (2) This section does not apply to:
- (a) a principal broker, associate broker, or sales agent as defined by Section 61-2f-102 licensed by this state who, in the ordinary course of the broker's or sales agent's business, gives an opinion:
    - (i) regarding the value of real estate;
    - (ii) to a potential seller or third-party recommending a listing price of real estate;or
  - (iii) to a potential buyer or third-party recommending a purchase price of real estate;
  - (b) an employee of a company who states an opinion of value or prepares a report containing value conclusions relating to real estate or real property solely for the company's use;
  - (c) an official or employee of a government agency while acting solely within the scope of the official's or employee's duties, unless otherwise required by Utah law;

(d) an auditor or accountant who states an opinion of value or prepares a report containing value conclusions relating to real estate or real property while performing an audit;

(e) an individual, except an individual who is required to be licensed or certified under this chapter, who states an opinion about the value of property in which the person has an ownership interest;

(f) an individual who states an opinion of value if no consideration is paid or agreed to be paid for the opinion and no other party is reasonably expected to rely on the individual's appraisal expertise;

(g) an individual, such as a researcher or a secretary, who does not render significant professional assistance, as defined by the board, in arriving at a real estate appraisal analysis, opinion, or conclusion;

(h) an attorney authorized to practice law in any state who, in the course of the attorney's practice or tax appeal services, uses an appraisal report governed by this chapter or who states an opinion of the value of real estate; or

(i) a person who is not an appraiser who presents or provides a price estimate, evidence, or property tax information solely for a property tax appeal in accordance with Section 59-2-1017.

(3) An opinion of value or report containing value conclusions exempt under Subsection (2) may not be referred to as an appraisal.

(4) Except as provided in Subsection (2), to prepare or cause to be prepared in this state an appraisal, an appraisal report, or a certified appraisal report, an individual shall:

(a) apply in writing for licensure or certification as provided in this chapter in the form the division may prescribe; and

(b) become licensed or certified under this chapter.

Amended by Chapter 180, 2013 General Session

**61-2g-302. Registration as trainee.**

(1) An individual shall register with the division as a trainee before the individual acts in the capacity of a trainee or earns experience for licensure.

(2) Subject to Subsection (2), the board, with the concurrence of the division, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for:

(a) the trainee registration required under Subsection (1); and

(b) renewal of a trainee registration.

Amended by Chapter 350, 2014 General Session

**61-2g-304. Application for licensure, certification, or registration.**

(1) An application for the following shall be sent to the division on a form approved by the division:

(a) original certification, licensure, or registration; and

(b) renewal of certification, licensure, or registration.

(2) The payment of the appropriate fee, as established by the division, with the

concurrence of the board, in accordance with Section 63J-1-504, must accompany an application for:

(a) original certification, licensure, or registration; and

(b) renewal of certification, licensure, or registration.

(3) At the time of filing an application described in Subsection (1), an applicant shall:

(a) sign a pledge to comply with the Uniform Standards of Professional Appraisal Practice and the ethical rules to be observed by an appraiser that are established under Section 61-2g-403 for:

(i) a certified or licensed appraiser; or

(ii) a trainee; and

(b) certify that the applicant understands the types of misconduct, as set forth in this chapter, for which a disciplinary proceeding may be initiated against a person certified, licensed, or registered under this chapter.

Amended by Chapter 166, 2012 General Session

**61-2g-304.5. Background checks.**

(1) An individual applying for licensure, certification, or registration under this chapter shall:

(a) submit, with the individual's application, a fingerprint card in a form acceptable to the division; and

(b) consent to a criminal background check by:

(i) the Utah Bureau of Criminal Identification; and

(ii) the Federal Bureau of Investigation.

(2) The division shall request that the Department of Public Safety complete a Federal Bureau of Investigation criminal background check for each applicant through the national criminal history system or any system that succeeds the national criminal history system.

(3) The applicant shall pay the cost of:

(a) the fingerprint card described in Subsection (1)(a); and

(b) a criminal background check.

(4) (a) A license, certification, or registration issued under this chapter is conditional pending completion of a criminal background check.

(b) A license, certification, or registration issued under this chapter is immediately and automatically revoked if a criminal background check reveals that the applicant failed to accurately disclose a criminal history that:

(i) relates to the appraisal industry; or

(ii) includes a felony conviction based on fraud, misrepresentation, or deceit.

(c) If a criminal background check reveals that an applicant failed to accurately disclose a criminal history other than a type described in Subsection (4)(b), the division shall review the application and, in accordance with rules made by the division pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may:

(i) place one or more conditions on the license, certification, or registration;

(ii) place one or more restrictions on the license, certification, or registration;

(iii) revoke the license, certification, or registration; or

(iv) refer the application to the board for a decision.

(d) An individual whose conditional license, certification, or registration is automatically revoked under Subsection (4)(b) or whose license, certification, or registration is conditioned, restricted, or revoked under Subsection (4)(c) may appeal the action in a hearing conducted by the board in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(e) The board may delegate to the division or an administrative law judge the authority to conduct a hearing described in Subsection (4)(d).

(f) The board, the division, or an administrative law judge may reverse an automatic revocation under Subsection (4)(b) only if:

(i) the criminal history upon which the revocation was based did not occur or is the criminal history of another individual;

(ii) at the time the applicant disclosed the applicant's criminal history, the applicant had a reasonable good faith belief that there was no criminal history to be disclosed; or

(iii) the division failed to follow the prescribed procedure for the revocation.

(5) (a) If an individual's conditional license, certification, or registration is revoked under Subsection (4) and the individual does not appeal the revocation in accordance with Subsection (4)(d), the individual may not apply for a new certification, license, or registration under this chapter for a period of 12 months after the day on which the conditional license, certification, or registration is revoked.

(b) If an individual's conditional license, certification, or registration is revoked, the individual appeals that revocation in accordance with Subsection (4)(d), and the revocation is upheld, the individual may not apply for a new license, certification, or registration under this chapter for a period of 12 months after the day on which the decision from the appeal is issued.

(6) The board may delegate to the division the authority to make a decision on whether relief from a revocation should be granted.

(7) Money an applicant pays for the cost of the criminal background check is nonlapsing.

Enacted by Chapter 350, 2014 General Session

**61-2g-305. Expiration of license, certification, or registration.**

(1) An initial license, certification, or registration issued under this chapter expires on the expiration date indicated on the license, certificate, or registration.

(2) A renewal license, certification, or registration issued under this chapter expires two years from the date of issuance.

(3) (a) The scheduled expiration date of a license, certification, or registration shall appear on the license, certification, or registration document.

(b) (i) The division shall mail a holder of a license, certification, or registration notice of its expiration to the last address stated on the division's records as the holder's current address.

(ii) To be mailed a notice under this Subsection (3)(b), a holder of a license, certification, or registration shall provide to the division in writing the holder's current address.



(iii) A holder's license, certification, or registration expires if not renewed by the holder notwithstanding whether the holder receives a notice of its expiration by the division under this Subsection (3)(b).

Renumbered and Amended by Chapter 289, 2011 General Session

**61-2g-306. Renewal of license, certification, or registration.**

(1) To renew a license, certification, or registration, before the license, certification, or registration expires, the holder of the license, certification, or registration shall submit to the division in compliance with procedures set through the concurrence of the division and the board:

(a) an application for renewal;

(b) a fee established by the division and the board, in accordance with Section 63J-1-504; and

(c) evidence in the form prescribed by the division of having completed the continuing education requirements for renewal specified in this chapter.

(2) (a) A license, certification, or registration expires if it is not renewed on or before its expiration date.

(b) For a period of 30 days after the expiration date, a license, certification, or registration may be reinstated upon:

(i) payment of a renewal fee and a late fee determined through the concurrence of the division and the board; and

(ii) satisfying the continuing education requirements specified in Section 61-2g-307.

(c) After the 30-day period described in Subsection (2)(b), and until six months after the expiration date, a license, certification, or registration may be reinstated by:

(i) paying a renewal fee and a reinstatement fee determined through the concurrence of the division and the board; and

(ii) satisfying the continuing education requirements specified in Section 61-2g-307.

(d) After the six-month period described in Subsection (2)(c), and until one year after the expiration date, a license, certification, or registration may be reinstated by:

(i) paying a renewal fee and a reinstatement fee determined through the concurrence of the division and the board in accordance with Section 63J-1-504;

(ii) providing proof acceptable to the division, with the concurrence of the board, of the person having satisfied the continuing education requirements of Section 61-2g-307; and

(iii) providing proof acceptable to the division, with the concurrence of the board, of the person completing 24 hours of continuing education:

(A) in addition to the requirements in Section 61-2g-307; and

(B) on a subject determined by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(e) The division shall relicense, recertify, or reregister a person who does not renew that person's license, certification, or registration within one year after the expiration date as prescribed for an original application.

(f) Notwithstanding Subsection (2)(a), the division may extend the term of a

license, certification, or registration that would expire under Subsection (2)(a) except for the extension if:

- (i) (A) the person complies with the requirements of this section to renew the license, certification, or registration; and
- (B) the application for renewal remains pending at the time of the extension; or
- (ii) at the time of the extension, there is pending under this chapter a disciplinary action.

(3) A person who is licensed, certified, or registered under this chapter shall notify the division of the following by sending the division a signed statement within 10 business days of:

- (a) a conviction of, or the entry of a plea in abeyance to:
    - (i) a felony; or
    - (ii) a misdemeanor involving financial services or a financial services-related business, fraud, a false statement or omission, theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, or extortion;
  - (b) the potential resolution of a felony or of a misdemeanor described in Subsection (3)(a)(ii) by:
    - (i) a diversion agreement; or
    - (ii) any other agreement under which a criminal charge is suspended for a period of time;
  - (c) the suspension, revocation, surrender, cancellation, or denial of a professional license, certification, or registration of the person, whether the license, certification, or registration is issued by this state or another jurisdiction; or
  - (d) the entry of a cease and desist order or a temporary or permanent injunction:
    - (i) against the person by a court or administrative agency; and
    - (ii) on the basis of:
      - (A) conduct or a practice involving an act regulated by this chapter; or
      - (B) conduct involving fraud, misrepresentation, or deceit.
- (4) The board, with the concurrence of the division, shall enforce the reporting requirement of Subsection (3) pursuant to Section 61-2g-502.

Amended by Chapter 166, 2012 General Session

**61-2g-307. Continuing education requirements.**

(1) As a prerequisite to renewal of a license, certification, or registration, the applicant for renewal shall present evidence satisfactory to the division of having met the continuing education requirements of this section.

(2) A person licensed, certified, or registered under this chapter shall complete during the two-year period immediately preceding the filing of an application for renewal not less than 28 classroom hours of instruction in courses or seminars that have received the approval of the division.

(3) (a) The division, with the concurrence of the board, may adopt rules for the implementation of this section to assure that a person renewing that person's license, certification, or registration under this chapter has a working knowledge of current real estate appraisal theories, practices, and techniques that will enable the person to provide competent real estate appraisal services to the members of the public with

whom that person deals in a professional relationship under the authority of that person's license, certificate, or registration.

(b) An amendment or repeal of a rule adopted by the division under this section, with the concurrence of the board, does not operate to deprive a person of credit toward renewal of that person's license, certification, or registration for a course of instruction that is successfully completed by the applicant before the date of the amendment or repeal of the rule.

(c) The rules made under this Subsection (3) shall prescribe:

(i) policies and procedures to be followed in obtaining division approval of courses of instruction and seminars;

(ii) standards, policies, and procedures to be used by the division in evaluating an applicant's claims of equivalency; and

(iii) standards, monitoring methods, and systems for recording attendance to be employed by course and seminar sponsors as a prerequisite to division approval of courses and seminars for credit.

(4) In lieu of meeting the requirements set forth in Subsection (2) and applicable rules, an applicant for renewal may satisfy all or part of the continuing education requirements that are imposed by the board in excess of the minimum requirements of the Appraisal Qualification Board by presenting evidence of the following:

(a) completion of an educational program of study determined by the board to be equivalent, for continuing education purposes, to courses or seminars approved by the board; or

(b) participation other than as a student in educational processes and programs approved by the board that relate to real property appraisal theory, practices, or techniques including teaching, program development, and preparation of textbooks, monographs, articles, and other instructional materials.

(5) A person whose license, certification, or registration is suspended as the result of a disciplinary action taken under this chapter may not apply for reinstatement unless the person presents evidence of completion of the continuing education requirement that is required by this chapter for renewal.

Renumbered and Amended by Chapter 289, 2011 General Session

**61-2g-308. Licensing, certification, or registration requirements for nonresidents -- Temporary license or certificate -- Revocation.**

(1) An individual applicant for licensure, certification, or registration under this chapter who is not a resident of this state shall submit with the applicant's application an irrevocable consent that service of process upon the applicant may be made by delivery of the process to the director of the division if, in an action against the applicant in a court of this state arising out of the applicant's activities governed by this chapter in this state, the plaintiff cannot, in the exercise of due diligence, obtain personal service upon the applicant.

(2) A nonresident of this state who complies with Subsection (1) may obtain a license, a certification, or a registration in this state by complying with this chapter relating to licensure, certification, or registration.

(3) (a) A nonresident of this state who complies with Subsection (1) may obtain

a temporary permit for a license or certification to perform a contract relating to the appraisal of real estate or real property in this state.

(b) To qualify for the issuance of a temporary permit for a license or certification, an applicant shall:

- (i) submit an application on a form approved by the division;
- (ii) submit evidence that the applicant is licensed or certified in the state in which the applicant primarily conducts business;
- (iii) certify that no formal charges alleging violation of state appraisal licensing or certification laws have been filed against the applicant by the applicant's state of domicile; and
- (iv) pay an application fee in an amount established by the division with the concurrence of the board.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division, with the concurrence of the board, shall make rules establishing:

- (a) the duration of a temporary permit; and
- (b) procedures for renewal of a temporary permit.

(5) A temporary permit issued under this section shall be immediately and automatically revoked if the appraiser's license or certification is suspended or revoked in the appraiser's state of domicile.

(6) A person whose temporary permit for a license or certification is revoked under Subsection (5) is entitled to a postrevocation hearing to challenge the revocation. The hearing shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 166, 2012 General Session

**61-2g-309. Denial of licensure, certification, or registration.**

The division may, upon compliance with Title 63G, Chapter 4, Administrative Procedures Act, deny the issuance of a license, certification, or registration to an applicant on any of the grounds enumerated in this chapter.

Renumbered and Amended by Chapter 289, 2011 General Session

**61-2g-310. Reciprocal licensure.**

(1) An applicant for licensure or certification in this state who is credentialed under the laws of any other state, territory, or district may obtain a reciprocal credential in this state if:

(a) the individual holds a current, valid credential issued by a state that, on the day on which the individual submits an application, is in compliance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as determined by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council; and

(b) the credentialing requirements of that state, that are in force on the day on which the individual submits an application, meet or exceed the credentialing requirements described in this chapter and the rules made under this chapter.

(2) An individual who holds a reciprocal credential described in Subsection (1)

shall comply with all statutes and rules that govern the appraisal industry in this state, including requirements relating to:

- (a) the payment of fees; and
- (b) continuing education.

Amended by Chapter 350, 2014 General Session

**61-2g-311. State-licensed appraiser -- Authority and qualifications.**

(1) A state-licensed appraiser is authorized to appraise complex and noncomplex 1-4 family residential units in this state having a transaction value permitted under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations.

(2) A state-licensed appraiser is authorized to appraise vacant or unimproved land having a transaction value permitted under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations that is utilized for 1-4 family purposes or for which the highest and best use is 1-4 family purposes and subdivisions for which a development analysis/appraisal is not necessary.

(3) A state-licensed appraiser may not issue a certified appraisal report.

(4) To qualify as a state-licensed appraiser, an applicant must:

(a) be of good moral character;

(b) demonstrate honesty, competency, integrity, truthfulness, and general fitness to command the confidence of the community;

(c) pass the licensing examination with a satisfactory score as determined by the Appraisal Qualification Board;

(d) successfully complete the educational requirements established by rule in accordance with Subsection (5); and

(e) possess the experience in real property appraisal established by rule in accordance with Subsection (5).

(5) (a) The division shall, with the concurrence of the board, make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish:

(i) the educational requirements described in Subsection (4)(d); and

(ii) the experience in real property appraisal described in Subsection (4)(e).

(b) The educational and experience requirements established under Subsection (5)(a) shall meet or exceed the educational requirements and the hourly experience requirements adopted by the Appraisal Qualification Board.

Amended by Chapter 350, 2014 General Session

**61-2g-312. State-certified appraisers -- Authority.**

(1) A state-certified residential appraiser:

(a) is authorized to appraise the types of real estate that a state-licensed appraiser is authorized to appraise;

(b) is authorized to appraise 1-4 unit residential real estate without regard to transaction value or complexity; and

(c) is not authorized to appraise subdivisions for which a development

analysis/appraisal is necessary.

(2) A state-certified general appraiser is authorized to appraise all types of real estate and real property.

(3) A state-certified appraiser who satisfies all requirements described in this chapter and in rule made under this chapter may supervise trainees as allowed by rule.

Amended by Chapter 350, 2014 General Session

**61-2g-313. State-certified residential appraiser -- Authority and qualifications.**

(1) An applicant for certification as a residential appraiser shall provide to the division evidence of:

(a) the applicant's good moral character, honesty, competency, integrity, truthfulness, and general fitness to command the confidence of the community;

(b) completion of the certification examination with a satisfactory score as determined by the Appraisal Qualification Board;

(c) completion of the educational requirements established by rule in accordance with Subsection (3); and

(d) experience in real property appraisal as established by rule in accordance with Subsection (3).

(2) Upon request by the division, an applicant shall make available to the division for examination:

(a) a detailed listing of the real estate appraisal reports or file memoranda for which experience is claimed; and

(b) a sample selected by the division of appraisal reports that the applicant has prepared in the course of the applicant's appraisal practice.

(3) (a) The division shall, with the concurrence of the board, make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish:

(i) the educational requirements described in Subsection (1)(c); and

(ii) the experience in real property appraisal described in Subsection (1)(d).

(b) The educational and experience requirements established under Subsection (3)(a) shall meet or exceed the educational requirements and the hourly experience requirements adopted by the Appraisal Qualification Board.

Amended by Chapter 350, 2014 General Session

**61-2g-314. State-certified general appraiser -- Application -- Qualifications.**

(1) An applicant for certification as a general appraiser shall provide to the division evidence of:

(a) the applicant's good moral character, honesty, competency, integrity, truthfulness, and general fitness to command the confidence of the community;

(b) completion of the certification examination with a satisfactory score as determined by the Appraisal Qualification Board;

(c) completion of the educational requirements established by rule in accordance with Subsection (3); and

(d) experience in real property appraisal as established by rule in accordance with Subsection (3).

(2) Upon request by the division, an applicant shall make available to the division for examination:

(a) a detailed listing of the real estate appraisal reports or file memoranda for which experience is claimed; and

(b) a sample selected by the division of appraisal reports that the applicant has prepared in the course of the applicant's appraisal practice.

(3) (a) The division shall, with the concurrence of the board, make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish:

(i) the educational requirements described in Subsection (1)(c); and

(ii) the experience in real property appraisal described in Subsection (1)(d).

(b) The educational and experience requirements established under Subsection (3)(a) shall meet or exceed the educational requirements and the hourly experience requirements adopted by the Appraisal Qualification Board.

Amended by Chapter 350, 2014 General Session

**61-2g-315. Licensing, certification, and registration documents -- Assigned number to be used on contracts -- Surrender of documents upon suspension.**

(1) The division shall issue to a person licensed, certified, or registered under this chapter a document:

(a) stating that the person is licensed, certified, or registered under this chapter; and

(b) specifying the expiration date of a license or certification.

(2) (a) A license, a certification, or a registration document issued under this chapter shall bear a license, certification, or registration number assigned by the division.

(b) An assigned number shall be used in a statement of qualification, a contract, or another instrument used by the holder of the license, certificate, or registration when reference is made to the holder's status as being licensed, certified, or registered under this chapter.

(3) (a) A license, certification, or registration document is the property of the state.

(b) Upon a suspension or revocation of a license, certification, or registration under this chapter, the individual holding the applicable document shall immediately return the document to the division.

Amended by Chapter 166, 2012 General Session

**61-2g-316. Surrender of license.**

(1) The division may, by written agreement, accept the voluntary surrender of a license issued under this chapter.

(2) Tender and acceptance of a voluntary surrender of a license under

Subsection (1):

(a) does not prevent the division from pursuing additional action, including disciplinary action, that relates to the surrendered license and is authorized by this chapter or by rules made under this chapter; and

(b) terminates all rights and privileges associated with the license.

(3) A person may restore the rights and privileges described in Subsection (2)(b) only if the person reapplies for, and is granted, licensure in accordance with the requirements described in this chapter.

(4) Any documentation relating to the tender and acceptance of a voluntary surrender is a public record.

Enacted by Chapter 350, 2014 General Session

**61-2g-401. State-certified and state-licensed appraisers -- Restrictions on use of terms -- Conduct prohibited or required -- Trainee.**

(1) (a) The terms "state-certified general appraiser," "state-certified residential appraiser," and "state-licensed appraiser":

(i) may only be used to refer to an individual who is certified or licensed under this chapter; and

(ii) may not be used following, or immediately in connection with, the name or signature of a firm, partnership, corporation, or group, or in any manner that it might be interpreted as referring to a firm, partnership, corporation, group, or to anyone other than the individual who is certified or licensed under this chapter.

(b) The requirement of this Subsection (1) may not be construed to prevent a state-certified general appraiser from signing an appraisal report on behalf of a corporation, partnership, firm, or group practice if it is clear that:

(i) only the individual is certified; and

(ii) the corporation, partnership, firm, or group practice is not certified.

(c) Except as provided in Section 61-2g-103, a certificate or license may not be issued under this chapter to a corporation, partnership, firm, or group.

(2) (a) A person other than a state-certified general appraiser or state-certified residential appraiser, may not assume or use any title, designation, or abbreviation likely to create the impression of certification in this state as a real estate appraiser.

(b) A person other than a state-licensed appraiser may not assume or use any title, designation, or abbreviation likely to create the impression of licensure in this state as a real estate appraiser.

(3) (a) Only an individual who has qualified under the certification requirements of this chapter is authorized to prepare and sign a certified appraisal report relating to real estate or real property in this state.

(b) If a certified appraisal report is prepared and signed by a state-certified residential appraiser, the certified appraisal report shall state, immediately following the signature on the report, "State-Certified Residential Appraiser."

(c) If a certified appraisal report is prepared and signed by a state-certified general appraiser, the certified appraisal report shall state, immediately following the signature on the report, "State-Certified General Appraiser."

(d) An appraisal report prepared by a state-licensed appraiser shall state,



immediately following the signature on the report, "State-Licensed Appraiser."

(e) When signing a certified appraisal report, a state-certified appraiser shall also place on the report, immediately below the state-certified appraiser's signature the state-certified appraiser's certificate number and its expiration date.

(f) A state-certified residential appraiser may not prepare a certified appraisal report outside the state-certified residential appraiser's authority as defined in Section 61-2g-312.

(g) A state-licensed appraiser who assisted in the preparation of a certified appraisal report is authorized to cosign the certified appraisal report.

(4) A person who has not qualified under this chapter may not describe or refer to any appraisal or appraisal report relating to real estate or real property in this state by the terms "certified appraisal" or "certified appraisal report."

(5) If a trainee assists a state-certified appraiser in the preparation of an appraisal report, the appraisal report shall disclose:

(a) the trainee's name; and

(b) the extent to which the trainee assists in the preparation of the appraisal report.

Renumbered and Amended by Chapter 289, 2011 General Session

**61-2g-402. Principal place of business -- Display of documents -- Notify of changes -- Nonresidents.**

(1) A person licensed or certified under this chapter shall:

(a) designate and maintain a principal place of business; and

(b) conspicuously display the person's license or certification.

(2) Upon a change of a person's principal business location or home address, a person licensed or certified under this chapter shall promptly send the division a signed statement notifying the division of the change within 10 business days of the change.

(3) A nonresident licensee or certificate holder is not required to maintain a place of business in this state if the nonresident maintains an active place of business in the nonresident's state of domicile.

Amended by Chapter 166, 2012 General Session

**61-2g-403. Professional conduct -- Uniform standards.**

(1) (a) A person licensed, certified, or registered under this chapter shall comply with:

(i) generally accepted standards of professional appraisal practice; and

(ii) generally accepted ethical rules to be observed by a real estate appraiser.

(b) Subject to the other provisions of this Subsection (1), generally accepted standards of professional appraisal practice are evidenced by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Foundation.

(c) After a public hearing held in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board, with the concurrence of the division:

(i) shall adopt and may make modifications of or additions to the Uniform Standards of Professional Appraisal Practice as the board considers appropriate to

comply with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; or

(ii) may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, exempt a person licensed, certified, or registered from complying with a provision of the Uniform Standards of Professional Appraisal Practice for an activity that the person engages in on behalf of a governmental entity.

(d) When an individual is a state-licensed appraiser or state-certified appraiser and also holds a license issued under Chapter 2f, Real Estate Licensing and Practices Act, the individual may provide an opinion of price of real estate without complying with the Uniform Standards of Professional Appraisal Practice if the individual provides the opinion of price as a licensee under Chapter 2f, Real Estate Licensing and Practices Act.

(e) A state-licensed or state-certified appraiser who also holds a license issued under Chapter 2c, Utah Residential Mortgage Practices and Licensing Act, or Chapter 2f, Real Estate Licensing and Practices Act, may not act under more than one license in a single transaction.

(2) When instructed by the board, the division shall schedule a public hearing pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the purpose of deciding whether or not the board should require a modified or supplemental standard or the ethical rule to be observed by a person licensed, certified, or registered under this chapter if the Appraisal Standards Board of the Appraisal Foundation:

(a) (i) modifies the Uniform Standards of Professional Appraisal Practice;  
(ii) issues a supplemental appraisal standard which it considers appropriate for:  
(A) a residential real estate appraiser; or  
(B) a general real estate appraiser; or  
(iii) issues an ethical rule to be observed by a real estate appraiser; and  
(b) requests the board to consider the adoption of the modified or supplemental standard or ethical rule.

(3) If, after the notice and public hearing described in Subsection (2), the board finds that a modified or supplemental standard or the ethical rule issued by the Appraisal Standards Board of the Appraisal Foundation is appropriate for a person licensed, certified, or registered under this chapter, the board shall recommend a rule requiring a person licensed, certified, or registered under this chapter to observe the modified or supplemental standard or the ethical rule.

Amended by Chapter 166, 2012 General Session

**61-2g-404. Registration, licensure, or certification prerequisite to suit for compensation.**

A person engaged in the business of real estate appraising in this state or acting in the capacity of a real estate appraiser in this state may not bring or maintain an action as a plaintiff in a court of this state to collect compensation for the performance of real estate appraisal services for which registration, licensure, or certification is required by this chapter without alleging and proving that the person was the holder of a valid registration, license, or certification in this state at all times during the performance of the real estate appraisal services.

Renumbered and Amended by Chapter 289, 2011 General Session

**61-2g-405. Recordkeeping requirements.**

(1) Subject to Subsection (2), a person licensed or certified under this chapter and a person required to be registered under this chapter before May 3, 2001, shall retain for a period of five years the original or a true copy of:

- (a) each written contract engaging the person's services for real estate or real property appraisal work;
- (b) each appraisal report prepared or signed by the person; and
- (c) the supporting data assembled and formulated by the appraiser in preparing each appraisal report.

(2) The five-year period for retention of records is applicable to each engagement of the services of the appraiser and begins upon the date of the delivery of each appraisal report to the client unless, within the five-year period, the appraiser is notified that the appraisal or the appraisal report is involved in litigation, in which event the records must be maintained for the longer of:

- (a) five years; or
- (b) two years following the date of the final disposition of the litigation.

(3) Upon reasonable notice, a person licensed or certified under this chapter and a person required to be registered under this chapter before May 3, 2001, shall make the records required to be maintained under this chapter available to the division for inspection and copying.

Renumbered and Amended by Chapter 289, 2011 General Session

**61-2g-406. Contingent fees.**

(1) A person licensed or certified under this chapter who enters into an agreement to perform an appraisal may not accept a contingent fee.

(2) A person who presents or provides a price estimate or property tax information in accordance with Section 59-2-1017, or a person who is licensed or certified under this chapter who enters into an agreement to provide consultation services, may be paid a fixed fee or a contingent fee.

(3) (a) If a person who presents or provides a price estimate or property tax information in accordance with Section 59-2-1017, or a person who is licensed or certified under this chapter, enters into an agreement to perform consultation services for a contingent fee, this fact shall be clearly stated in each oral statement.

(b) In addition to the requirements of Subsection (3)(a), if a person who presents or provides a price estimate or property tax information in accordance with Section 59-2-1017, or a person who is licensed or certified under this chapter, prepares a written consultation report or summary, letter of transmittal, or certification statement for a contingent fee, the person shall clearly state in the price estimate, property tax information, report, summary, letter of transmittal, or certification statement that the report is prepared under a contingent fee arrangement.

Amended by Chapter 180, 2013 General Session

**61-2g-407. Consultation reports -- Restrictions on use of terms.**

A person who presents or provides a price estimate or property tax information in accordance with Section 59-2-1017, or prepares a written or oral consultation report, may not refer to the price estimate, property tax information, or consultation report as an appraisal, an appraisal report, or in any manner that may be interpreted as referring to an appraisal or an appraisal report.

Amended by Chapter 180, 2013 General Session

**61-2g-501. Enforcement -- Investigation -- Orders -- Hearings.**

- (1) (a) The division may investigate the actions of:
- (i) a person registered, licensed, or certified under this chapter;
  - (ii) an applicant for registration, licensure, or certification;
  - (iii) an applicant for renewal of registration, licensure, or certification; or
  - (iv) a person required to be registered, licensed, or certified under this chapter.
- (b) The division may initiate an agency action against a person described in Subsection (1)(a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to:
- (i) impose disciplinary action;
  - (ii) deny issuance to an applicant of:
    - (A) an original registration, license, or certification; or
    - (B) a renewal of a registration, license, or certification; or
  - (iii) issue a cease and desist order as provided in Subsection (3).
- (2) (a) The division may:
- (i) administer an oath or affirmation;
  - (ii) subpoena a witness or evidence;
  - (iii) take evidence; and
  - (iv) require the production of a book, paper, contract, record, document, information, or evidence relevant to the investigation described in Subsection (1).
- (b) The division may serve a subpoena by certified mail.
- (c) A failure to respond to a request by the division in an investigation authorized under this chapter is considered to be a separate violation of this chapter, including:
- (i) failing to respond to a subpoena as a witness;
  - (ii) withholding evidence; or
  - (iii) failing to produce a book, paper, contract, document, information, or record.
- (d) (i) If a person is found to have violated this chapter or a rule made under this chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract, document, information, or record required under this chapter, including the costs incurred to copy an electronic book, paper, contract, document, information, or record in a universally readable format.
- (ii) If a person fails to pay the costs described in Subsection (2)(d)(i) when due, the person's license, certification, or registration is automatically suspended:
- (A) beginning the day on which the payment of costs is due; and
  - (B) ending the day on which the costs are paid.
- (3) (a) The director shall issue and serve upon a person an order directing that person to cease and desist from an act if:

(i) the director has reason to believe that the person has been engaging, is about to engage, or is engaging in the act constituting a violation of this chapter; and  
(ii) it appears to the director that it would be in the public interest to stop the act.  
(b) Within 10 days after receiving the order, the person upon whom the order is served may request a hearing.

(c) Pending a hearing requested under Subsection (3)(b), a cease and desist order shall remain in effect.

(d) If a request for hearing is made, the division shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(4) (a) After a hearing requested under Subsection (3), if the board and division concur that an act of the person violates this chapter, the board, with the concurrence of the division:

- (i) shall issue an order making the cease and desist order permanent; and
- (ii) may impose another disciplinary action under Section 61-2g-502.

(b) The director shall commence an action in the name of the Department of Commerce and Division of Real Estate, in the district court in the county in which an act described in Subsection (3) occurs or where the person resides or carries on business, to enjoin and restrain the person from violating this chapter if:

- (i) (A) a hearing is not requested under Subsection (3); and  
(B) the person fails to cease the act described in Subsection (3); or
- (ii) after discontinuing the act described in Subsection (3), the person again commences the act.

(5) A remedy or action provided in this section does not limit, interfere with, or prevent the prosecution of another remedy or action, including a criminal proceeding.

(6) (a) Except as provided in Subsection (6)(b), the division shall commence a disciplinary action under this chapter no later than the earlier of the following:

- (i) four years after the day on which the violation is reported to the division; or
- (ii) 10 years after the day on which the violation occurred.

(b) The division may commence a disciplinary action under this chapter after the time period described in Subsection (6)(a) expires if:

- (i) (A) the disciplinary action is in response to a civil or criminal judgment or settlement; and  
(B) the division initiates the disciplinary action no later than one year after the day on which the judgment is issued or the settlement is final; or
- (ii) the division and the person subject to a disciplinary action enter into a written stipulation to extend the time period described in Subsection (6)(a).

Amended by Chapter 350, 2014 General Session

**61-2g-502. Disciplinary action -- Grounds.**

(1) (a) The board may order disciplinary action, with the concurrence of the division, against a person:

- (i) registered, licensed, or certified under this chapter; or
- (ii) required to be registered, licensed, or certified under this chapter.

(b) On the basis of a ground listed in Subsection (2) for disciplinary action, board action may include:

- (i) revoking, suspending, or placing a person's registration, license, or certification on probation;
- (ii) denying a person's original registration, license, or certification;
- (iii) denying a person's renewal license, certification, or registration;
- (iv) in the case of denial or revocation of a registration, license, or certification, setting a waiting period for an applicant to apply for a registration, license, or certification under this chapter;
- (v) ordering remedial education;
- (vi) imposing a civil penalty upon a person not to exceed the greater of:
  - (A) \$5,000 for each violation; or
  - (B) the amount of any gain or economic benefit from a violation;
- (vii) issuing a cease and desist order;
- (viii) modifying an action described in Subsections (1)(b)(i) through (vii) if the board, with the concurrence of the division, finds that the person complies with court ordered restitution; or
- (ix) doing any combination of Subsections (1)(b)(i) through (viii).

(c) (i) If the board or division issues an order that orders a fine or educational requirements as part of the disciplinary action against a person, including a stipulation and order, the board or division shall state in the order the deadline by which the person shall comply with the fine or educational requirements.

(ii) If a person fails to comply with a stated deadline:

- (A) the person's license, certificate, or registration is automatically suspended:
- (I) beginning on the day specified in the order as the deadline for compliance;

and

- (II) ending the day on which the person complies in full with the order; and
- (B) if the person fails to pay a fine required by an order, the division may begin a collection process:
  - (I) established by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
  - (II) subject to Title 63A, Chapter 3, Part 5, Office of State Debt Collection.

(2) The following are grounds for disciplinary action under this section:

- (a) procuring or attempting to procure a registration, license, or certification under this chapter:
  - (i) by fraud; or
  - (ii) by making a false statement, submitting false information, or making a material misrepresentation in an application filed with the division;
- (b) paying money or attempting to pay money other than a fee provided for by this chapter to a member or employee of the division to procure a registration, license, or certification under this chapter;
- (c) an act or omission in the practice of real estate appraising that constitutes dishonesty, fraud, or misrepresentation;
- (d) entry of a judgment against a registrant, licensee, or certificate holder on grounds of fraud, misrepresentation, or deceit in the making of an appraisal of real estate;
- (e) a guilty plea to a criminal offense involving moral turpitude that is held in abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo

contendere, of a criminal offense involving moral turpitude;

(f) engaging in the business of real estate appraising under an assumed or fictitious name not properly registered in this state;

(g) paying a finder's fee or a referral fee to a person not licensed or certified under this chapter in connection with an appraisal of real estate or real property in this state;

(h) making a false or misleading statement in:

(i) that portion of a written appraisal report that deals with professional qualifications; or

(ii) testimony concerning professional qualifications;

(i) violating or disregarding:

(i) this chapter;

(ii) an order of:

(A) the board; or

(B) the division, in a case when the board delegates to the division the authority to make a decision on behalf of the board; or

(iii) a rule issued under this chapter;

(j) violating the confidential nature of governmental records to which a person registered, licensed, or certified under this chapter gained access through employment or engagement as an appraiser by a governmental agency;

(k) accepting a contingent fee for performing an appraisal if in fact the fee is or was contingent upon:

(i) the appraiser reporting a predetermined analysis, opinion, or conclusion;

(ii) the analysis, opinion, conclusion, or valuation reached; or

(iii) the consequences resulting from the appraisal assignment;

(l) unprofessional conduct as defined by statute or rule;

(m) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

(i) providing a title insurance product or service without the approval required by Section 31A-2-405; or

(ii) knowingly providing false or misleading information in the statement required by Subsection 31A-2-405(2); or

(n) other conduct that constitutes dishonest dealing.

Amended by Chapter 166, 2012 General Session

Amended by Chapter 369, 2012 General Session

**61-2g-503. Reinstatement of license, certification, and registration.**

(1) An individual whose license, certification, or registration is revoked under this chapter:

(a) may not apply for renewal or reinstatement of that license, certification, or registration; and

(b) may apply for licensure, certification, or registration as prescribed for an original license, certification, or registration subject to the limitations in Subsection (2).

(2) An applicant for licensure, certification, or registration under Subsection (1) is not entitled to credit for experience gained before the date of revocation in determining whether the applicant meets the experience requirement for licensure, certification, or

registration.

Amended by Chapter 166, 2012 General Session

**61-2g-504. Disciplinary hearing process.**

(1) The division and board shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in conducting any disciplinary proceedings under this chapter.

(2) Before disciplinary action may be taken under this chapter, the division shall:

(a) notify the person against whom disciplinary action is sought; and

(b) commence an adjudicative proceeding.

(3) If, after the hearing, the board determines, with the concurrence of the division, that a person described in Subsection (2) violated this chapter, the board may impose disciplinary action, with the concurrence of the division, by written order as provided in Section 61-2g-502.

(4) (a) The board may:

(i) conduct hearings with the assistance of an administrative law judge; or

(ii) delegate hearings to an administrative law judge.

(b) If a hearing is delegated by the board to an administrative law judge, the administrative law judge shall submit to the board and the director for their consideration:

(i) written findings of fact;

(ii) written conclusions of law; and

(iii) a recommended order.

(5) (a) An applicant, licensee, certificate holder, registrant, or person aggrieved, including the complainant, may obtain judicial review of an adverse ruling, order, or decision.

(b) If an applicant, licensee, certificate holder, or registrant prevails in an appeal and the court finds that the state action is undertaken without substantial justification, the court may award reasonable litigation expenses to the applicant, licensee, certificate holder, or registrant as provided under Title 78B, Chapter 8, Part 5, Small Business Equal Access to Justice Act.

Renumbered and Amended by Chapter 289, 2011 General Session

**61-2g-505. Penalty for violating this chapter -- Automatic revocation.**

(1) In addition to being subject to a disciplinary action, a person required to be licensed, certified, or registered under this chapter who violates this chapter:

(a) is guilty of a class A misdemeanor, upon a conviction of a first violation of this chapter; and

(b) is guilty of a third degree felony, upon conviction of a second or subsequent violation of this chapter.

(2) A license, certification, or registration issued by the division to a person convicted of a violation of Section 76-6-1203 is automatically revoked.

Renumbered and Amended by Chapter 289, 2011 General Session



**61-6-1. Short title.**

This chapter is known as the "Control Shares Acquisitions Act."

Enacted by Chapter 2, 1987 Special Session 1

**61-6-2. "Control shares" defined.**

(1) As used in this chapter, "control shares" means shares that except for this chapter would have voting power with respect to shares of an issuing public corporation that, when added to all other shares of the issuing public corporation owned by a person or in respect to which that person may exercise or direct the exercise of voting power, would entitle that person, immediately after acquisition of the shares (directly or indirectly, alone or as a part of a group), to exercise or direct the exercise of the voting power, including voting power pursuant to a revocable proxy, of the issuing public corporation in the election of directors within any of the following ranges of voting power:

- (a) 1/5 or more but less than 1/3 of all voting power;
- (b) 1/3 or more but less than a majority of all voting power; or
- (c) a majority or more of all voting power.

(2) Shares entitling a person, immediately after acquisition of the shares (directly or indirectly, including pursuant to a revocable proxy or as part of a group), to exercise or direct the exercise of less than 1/5 of all voting power of the issuing public corporation in the election of directors shall not be control shares, even if acquired in a control share acquisition. Shares cease to be control shares upon their transfer to a person who is not an affiliate of the transferor or an affiliate or member of a group with which the applicable control share acquisition was made, except to the extent the shares become control shares as a result of their acquisition by the transferee.

Amended by Chapter 106, 2000 General Session

**61-6-3. "Control share acquisition" defined.**

(1) (a) As used in this chapter, "control share acquisition" means:

(i) the acquisition, directly or indirectly, by any person of ownership of issued and outstanding control shares; or

(ii) the acquisition of power to direct the exercise of voting power with respect to issued and outstanding control shares, including the acquisition of voting power pursuant to a revocable proxy except as provided in Subsection (1)(b).

(b) "Control share acquisition" does not mean the acquisition of voting power pursuant to a revocable proxy if the revocable proxy is solicited by the issuing public corporation or the board of directors of the issuing public corporation in connection with shareholders' meetings or actions of the issuing public corporation.

(2) For purposes of this section, shares acquired within 90 days or shares acquired pursuant to a plan to make a control share acquisition are considered to have been acquired in the same acquisition.

(3) For purposes of this section, a person who acquires shares in the ordinary course of business for the benefit of others in good faith and not for the purpose of circumventing this chapter has voting power only of shares in respect of which that

person would be able to exercise or direct the exercise of votes without further instruction from others.

(4) The acquisition of any shares of an issuing public corporation does not constitute a control share acquisition if the acquisition is consummated in any of the following circumstances:

- (a) before May 29, 1987;
- (b) pursuant to a contract existing before May 29, 1987;
- (c) pursuant to the laws of descent and distribution;
- (d) pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing this chapter;
- (e) pursuant to a direct issue by or transfer from the issuing public corporation of its own shares, except that shares issued or transferred upon the conversion of a convertible security or upon exercising an option, warrant, or other right to purchase shares constitutes a control share acquisition unless the convertible security, option, warrant, or other right was acquired directly from the issuing public corporation by the acquiring person; or
- (f) pursuant to a merger or plan of share exchange effected in compliance with Title 16, Chapter 10a, Part 11, Merger and Share Exchange, or Title 16, Chapter 10a, Part 12, Sale of Property, if the issuing public corporation is a party to the agreement of merger or plan of share exchange.

(5) (a) The acquisition of shares of an issuing public corporation in good faith and not for the purpose of circumventing this chapter does not constitute a control share acquisition if the acquisition of shares is by or from:

- (i) any person whose voting rights had previously been authorized by shareholders in compliance with this chapter; or
- (ii) any person whose previous acquisition of shares of an issuing public corporation would have constituted a control share acquisition were it not for Subsection (4).

(b) Subsection (5)(a) does not apply if the acquisition entitles any person (directly or indirectly, alone or as part of a group) to exercise or direct the exercise of voting power of the corporation in the election of directors in excess of the range of the voting power otherwise authorized.

Amended by Chapter 106, 2000 General Session

**61-6-4. "Interested shares" defined.**

(1) As used in this chapter, "interested shares" means the shares of an issuing public corporation in respect of which any of the following persons may exercise or direct the exercise of the voting power of the corporation, on or after the applicable record date, in the election of directors:

- (a) an acquiring person or member of a group with respect to a control share acquisition;
- (b) any officer of the issuing public corporation; or
- (c) any employee of the issuing public corporation who is also a director of the corporation.

(2) "Interested shares" does not mean the shares of an issuing public

corporation in respect of which any of the persons described in Subsections (1)(a) through (c) may exercise or direct the exercise of the voting power of the corporation in the election of directors if the voting power is based solely on a revocable proxy given in response to a proxy solicitation made in accordance with Section 14 of the Securities Exchange Act of 1934, as amended.

Amended by Chapter 268, 1995 General Session

**61-6-5. Issuing public corporation defined.**

(1) As used in this chapter, "issuing public corporation" means a corporation, other than a depository institution, that is organized under the laws of this state and that has:

- (a) 100 or more shareholders;
- (b) its principal place of business, its principal office, or substantial assets within the state; and
- (c) (i) more than 10% of its shareholders resident in the state;  
(ii) more than 10% of its shares owned by Utah residents; or  
(iii) 10,000 shareholders resident in the state.

(2) The residence of a shareholder is presumed to be the address appearing in the records of the corporation.

(3) Shares held by banks or other depository institutions (except as trustee or guardian), brokers, or nominees shall be disregarded for purposes of calculating the percentages or numbers described in this section.

(4) As used in this chapter, "depository institution" means a depository institution or a depository institution holding company as defined in Section 7-1-103.

(5) A nonprofit corporation as defined in Section 16-6a-102 is not considered to be an issuing public corporation for purposes of this chapter.

Amended by Chapter 315, 2007 General Session

**61-6-6. Optional exemption from this chapter.**

A corporation's articles of incorporation or bylaws may provide that this chapter does not apply to control share acquisitions of shares of the corporation. To be effective, any such provision must have been adopted prior to the control share acquisition. Absent such a provision, control shares of an issuing public corporation acquired in a control share acquisition have only such voting rights as are conferred by Section 61-6-10.

Enacted by Chapter 2, 1987 Special Session 1

**61-6-7. Statement by acquiring person.**

Any person who proposes to make or has made a control share acquisition may deliver an acquiring person statement to the issuing public corporation at the issuing public corporation's principal office. The acquiring person statement shall set forth all of the following:

- (1) the identity of the acquiring person and each other member of any group of

which the person is a part for purposes of determining control shares;

(2) a declaration that the acquiring person statement is given pursuant to this chapter;

(3) the number of shares of the issuing public corporation owned (directly or indirectly) by the acquiring person and each other member of the group;

(4) the range of voting power under which the control share acquisition falls or would, if consummated, fall; and

(5) if the control share acquisition has not taken place:

(a) a description in reasonable detail of the terms of the proposed control share acquisition; and

(b) a statement by the acquiring person supported by reasonably detailed facts that the proposed control share acquisition, if consummated, will not be contrary to law, and that the acquiring person has the financial capacity to make the proposed control share acquisition.

Enacted by Chapter 2, 1987 Special Session 1

**61-6-8. Special meetings to consider voting rights -- Time limits -- Annual meetings.**

(1) Upon delivery of an acquiring person statement under Section 61-6-7, an acquiring person may request a special meeting of shareholders if the acquiring person gives an undertaking to pay the corporation's expenses of the special meeting within 10 days after the date of the meeting. After receiving the request, the directors of the issuing public corporation shall call a special meeting of shareholders of the issuing public corporation for the purpose of considering the voting rights to be accorded the shares acquired or to be acquired in the control share acquisition.

(2) Unless the acquiring person agrees in writing to another date, the special meeting of shareholders shall be held within 50 days after receipt by the issuing public corporation of the request.

(3) If no request is made, the voting rights to be accorded the shares acquired in the control share acquisition shall be presented to the next special or annual meeting of shareholders.

(4) If the acquiring person so requests in writing at the time of delivery of the acquiring person statement, the special meeting may not be held sooner than 30 days after receipt by the issuing public corporation of the acquiring person statement.

Enacted by Chapter 2, 1987 Special Session 1

**61-6-9. Notice of special or annual meetings to consider voting rights.**

(1) If a special meeting is requested, notice of the special meeting of shareholders shall be given as promptly as reasonably practicable by the issuing public corporation to all shareholders of record as of the record date set for the meeting, whether or not they are entitled to vote at the meeting.

(2) Notice of the special or annual shareholder meeting at which the voting rights are to be considered must include or be accompanied by the following:

(a) a copy of the acquiring person statement delivered to the issuing public

corporation; and

(b) a statement by the board of directors of the corporation, authorized by its directors, of its position or recommendation, or that it is taking no position or making no recommendation, with respect to the proposed control share acquisition.

Enacted by Chapter 2, 1987 Special Session 1

**61-6-10. Voting rights -- Approval.**

(1) Control shares acquired in a control share acquisition have the same voting rights as were accorded the shares before the control share acquisition only to the extent granted by resolution approved by the shareholders of the issuing public corporation.

(2) To be approved under this section, the resolution shall be approved:

(a) by each voting group entitled to vote separately on the proposal by a majority of all the votes entitled to be cast by that group, excluding all interested shares; and

(b) by each class of outstanding shares by a majority of all the holders of the outstanding shares of the class, if the proposed control share acquisition would, when fully implemented, result in any of the changes described in Section 16-10a-1004.

Amended by Chapter 277, 1992 General Session

**61-6-11. Shares subject to redemption.**

(1) If authorized in a corporation's articles of incorporation or bylaws before a control share acquisition has occurred, an issuing public corporation may redeem, at fair market value, control shares acquired in a control share acquisition with respect to which no acquiring person statement has been filed with the issuing public corporation. Any such redemption shall be consummated according to the procedures adopted by the corporation and shall take place at any time within 60 days after the last acquisition of control shares by the acquiring person.

(2) Control shares acquired in a control share acquisition are not subject to redemption after an acquiring person statement has been filed, unless the shares are not accorded full voting rights by the shareholders as provided in Section 61-6-10.

Enacted by Chapter 2, 1987 Special Session 1

**61-6-12. Dissenter's rights.**

(1) Unless otherwise provided in a corporation's articles of incorporation or bylaws before a control share acquisition has occurred, in the event control shares acquired in a control share acquisition are accorded full voting rights and the acquiring person has acquired control shares with a majority or more of all voting power, all shareholders of the issuing public corporation have dissenter's rights as provided in this chapter.

(2) As soon as practicable after such events have occurred, the board of directors shall cause a notice to be sent to all shareholders of the corporation advising them of the facts and that they have dissenter's rights to receive the fair value of their shares under Sections 16-10a-1301 through 16-10a-1331.

(3) As used in this section, "fair value" means a value not less than the highest price paid per share by the acquiring person in the control share acquisition.

Amended by Chapter 277, 1992 General Session